Alliance for Habitat Conservation

BIA
BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

April 6, 2009

Mr. Tom Oberbauer
County of San Diego
5201 Ruffin Road, Suite B
San Diego, CA 92122

RE: North County MSCP Revised Draft Plan Comments

Dear Tom:

On behalf of the Alliance for Habitat Conservation (AHC) and the Building Industry Association (BIA), thank you for this opportunity to submit comments on the recently revised draft North County MSCP plan documents.

The primary concern for our organizations is that this plan, as drafted, is unsustainable. In reading through the document, it is clear that there is no way to actually complete the plan given the limited acreage of land planned for development. When you factor in the overly broad use of PAMA, it makes this plan even more unbalanced. As such, we have grave concerns about the viability of this plan and urge reconsideration by the County at its earliest possible convenience.

As has been said in our previous comments, we disagree with the extensive use of PAMA as the primary land preservation tool. PAMA was used in the South County MSCP as a means to address small land holdings in very specific areas. It was never intended to be applied as broadly as is being proposed in the North County Plan and will essentially increase the amount of mitigation to 80-83% of a given property. This is neither fair nor reasonable and should be reconsidered with the amount of area overlaid with PAMA significantly reduced or eliminated all together.

We submit the following comments on the major outstanding issues our organizations have with the proposed plan. We look forward to following up with you and your team to discuss these comments in more detail.

MAJOR ISSUES

1. **Cost**:

**Summary**

A. Private development provides 62,117 acres for the Preserve (54.4%)

B. The value of that land is (per the MSCP) $939,918,000 (69% of total MSCP land value)

C. Cost per home just for Preserve land will be $32,000-122,000

The MSCP assumes that future development (mostly private) and hardline projects will contribute 42,117 acres of land (38,555 acres from future development and 3,562 acres from hardline projects) through mitigation, with an additional 500 acres being donated. An additional 20,000 acres will be given to the Preserve through "ordinance implementation", consisting primarily of applying the requirements of RPO to floodways, wetlands and steep slopes. Development of new jobs and homes is therefore providing 62,117 (54.4%) acres of the anticipated 114,000-acre preserve, far more than in the South County MSCP.

The estimated cost of the 60,000+ acres being provided by the private sector is estimated to have a value of $939,918,000. The total value of the land to be preserved is estimated to be $1,360,432,500 (Table 5-2). **This means that the private sector is responsible for 69% of the cost of the preserve.**

The MSCP estimates that 34,703 acres of "natural" land will be developed in the Plan area, not including land cleared for agriculture, trails or already planned (hardlined). This development will provide jobs, public facilities and new homes for County residents. The 34,703 is divided as follows:

- 28,255 acres (81%) are located in the Pre-Approved Mitigation Area (PAMA) where restrictions are increased and landowners are discouraged from doing anything with their property.
- **Only 6,488 (19%) acres are located outside of the PAMA where development is to be encouraged.**

The County has not provided any estimates of the amount of land proposed for various land use designations in and out of the North County MSCP PAMA so one can only guess at the number of homes or job-producing uses that could be built within the County's estimated development area. Much of the area that will become PAMA if the North County MSCP is adopted will be essentially downzoned, with minimum lot sizes being reduced to 1 unit per 20, 40, 80 or 160 acres. Outside of PAMA, lot sizes are often restricted by the community plans. Very small

amounts of land may allow 4-30 units per acre. Examples of the number of new homes that could be built in the North County MSCP Plan area over the next 20-25 years are below:

- Development of 6,448 acres at an average density of 1 du/acre=6,448 homes.
- Development of 6,488 acres at an average density of 2 du/acre=12,896 homes.
- Development of 6,488 acres at an average density of 4 du/acre=25,792 homes.
- Development of 28,255 acres at an average density of 1 du/20 acres=1,413 homes
- Development of 28,255 acres at an average density of 1 du/40 acres=706 homes.

A range of 7,154 to 27,205 new homes for San Diego County residents could be built using these estimated yields. As noted above, new development in the plan area is supposed to preserve 58,555 acres of land (38,555 for mitigation plus 20,000 acres of steep slopes, drainages and other "unbuildable" areas) for the North County MSCP Preserve at an estimated cost of $878,325,000. This amounts to a cost of $32,300-122,700 per house.

Even if one only considers the cost of the 38,555 acres of mitigation land ($578,325,000 @ $15,000/acre), the cost per house still ranges from $21,300 to over $80,000, **assuming allowed densities are reached both in and out of PAMA.**

It is well known that development within PAMA is very difficult and that development seldom achieves the allowed density. This often makes development proposed inside PAMA prohibitively expensive and never implemented. This means that nearly all development that will be allowed to occur in the Plan area is on the 6,448 acres outside of PAMA. If the entire amount is developed (no clustering or limits on lot clearing) and if all of it is some type of habitat the development of which requires mitigation, only roughly 6,488 acres of preserve land would be provided. This assumes an average mitigation ratio of 1.0 acres of mitigation for each acre developed. The small amount of development that is projected to occur outside of PAMA will only produce 5-6% of the 114,000-acre preserve. Public agencies will only produce an additional 27,534 acres of mitigation land for a total of 34,022 acres, leaving roughly 55,000 acres to be acquired by some means or the Plan fails.

Our primary concern, evidenced by discussions during meetings reviewing the draft plan, is that the answer will be to force even higher mitigation ratios, further throwing this already unbalanced plan further out of balance. This is unacceptable. The County needs to either find other means to build the preserve in a fair and balanced manner without the extensive use of PAMA or higher mitigation ratios or reduce the covered species being considered to reduce the preserve requirements for the plan.

2. **Sufficiently and Significantly Conserved Vegetation**: These sections were included in the original MSCP and are absent from this one, ostensibly because the "No Surprises" policy provides the same protection. No Surprises provides protection against requirements for additional land and money, provided a plan is operating per the Implementing Agreement. An

unexpected decline in the population of a Covered Species cannot be addressed by requirements from USFWS for more money or land. It only applies to Covered Species.

Sufficiently and Significantly Conserved Vegetation recognized that non-Covered species received benefit from the MSCP and provided protection against USFWS/CDFG requiring an amendment to the MSCP in the event that a non-Covered Species was listed. In the South County MSCP, which has this protection, USFWS/CDFG cannot require an amendment to the MSCP (which always result in more land set aside and more money for operation) IF that species resides in a sufficiently conserved vegetation type, UNLESS THEY PAY FOR IT. If the species resides in a significantly conserved vegetation community, USFWS/CDFG must provide money and/or land in the same proportions as they did in the original plan.

County staff has said that No Surprises provides the same level of protection as Sufficiently and Significantly Conserved Vegetation. We disagree and request that these important protections be added back into the plan documents.

3. **Mitigation is Only Allowed Inside PAMA:** Except for narrow endemics, the plan proposes that mitigation only be allowed inside PAMA. We assume the intent is to maximize the amount of land that is set-aside in PAMA. However, as part of the General Plan Update and RPO, the County will likely also require large open space dedications outside of PAMA. These include wetlands, non-Covered listed species, steep slopes, cultural resources, buffers, or just the County's standard limits on clearing large lots, none of which can be used as mitigation if the MSCP remains as written. This is inconsistent with the South County plan where mitigation credit was given for onsite preservation.

***For projects that are outside of PAMA, mitigation inside PAMA should not be required for projects which can meet their mitigation requirements through onsite open space dedications.*** Otherwise, projects could be hit with large open space set-aside requirements with additional offsite mitigation requirements for biological impacts, biological impacts, for that matter, which would be occurring outside of PAMA (i.e., on lands determined not be necessary for the viability of the preserve and the fulfillment of the MSCP planning objectives). For example, under the County's proposal, a 100-acre project outside of PAMA impacting an isolated patch of chaparral would not receive any mitigation credit for onsite open space dedication no matter how large that dedication was or what sort of biological habitat it contained. ***Only when a project would require offsite mitigation might it be appropriate to require this mitigation to occur inside of PAMA.***

4. **Proposed Avoidance Requirements in Draft General Plan:** The proposed avoidance requirements in the draft General Plan undermine the implementation of the North County MSCP. County staff has stated many times that the General Plan may be more restrictive than the MSCP, and does not distinguish between avoidance requirements in and/or out of PAMA. In short, the County clearly intends to greatly restrict development irrespective of the location of

proposed development, in or out of a PAMA. The less development that occurs, the less land is acquired inside of PAMA, meaning that the MSCP anticipated preserve will never be assembled.

There are many reasons that the County can use to greatly limit the amount of development that could otherwise reasonably occur, none of which are fair and balanced when layered together. ***ANY land that the County requires to be set aside in order to protect a resource MUST be credited toward a project's mitigation requirement.***

5. **Additional Mitigation May be Required:** Section 6.3.1 states that "Significant impacts to sensitive species that are not covered may require additional protection or mitigation under CEQA." This is not acceptable. Species that reside in conserved habitats will receive significant benefit from the MSCP to the point that additional mitigation is not needed. The draft North County MSCP cannot be supported if this is not the case. ***The plan should be redrafted to specifically exclude additional biological mitigation that can be demanded in addition to the MSCP and that any requirement by the wildlife agencies for additional mitigation is covered under the terms of the implementing agreement.***

6. **Size of the Preserve:** The proposed size of the preserve, and consequently the amount of development that will occur within the PAMA is not clear.

A. Section 3 states that the County expects approximately 75% of the **natural upland habitat** within the PAMA to be conserved. There are 129,802 acres of "natural lands" within PAMA, which means that roughly 32,450 acres of natural upland habitat could be developed in PAMA. **This is very different from 75% of the total natural lands being conserved, which equates to development of 34,209 acres. Section 4.1 is based on "natural lands" while Section 3.0 uses "natural upland habitat".** In any event, both the 32,450 and 34,209 are more than the amount of development in PAMA stated elsewhere in the MSCP.

B. Section 4.1 states that roughly 43,830 acres of natural lands (36,780 from future and hardline development vs. new ag. or non-development uses) in the Plan Area (in and out of PAMA) will be developed. It also states that "acreage above and beyond that required for mitigation will be acquired to assemble a functional preserve system of approximately 114,000 acres."

C. Section 4.1 states that 34,703 acres of future development will occur, with 28,255 acres expected in PAMA, **equating to 80% conservation of natural lands within PAMA.**

D. Section 4.1 states that 114,000 of the 136,835 acres in PAMA will be conserved. **This equates to 83.3% of the PAMA, leaving only 22,835 acres (16.7%) for development.**

E. The County analyzes impacts and mitigation from Hardline projects and Future Development. Section 4.3, Other Development Projects Within the PAMA, discusses and even lists many projects expected to be built. However, no statistics are given. How much land is proposed to be developed and how much will be conserved by Other Projects? Are these projects included in Future Development? They clearly are not included in Hardline Projects. If they are included in the "Future Development", they should be subtracted so we can see the true amount of land anticipated to be developed both in and out of PAMA.

***It is clear that the County intends to pursue a preserve that is 114,000 acres in size. This would not be possible if the County is anticipating that 25% of the natural lands (or natural upland habitat) would be lost to development.***

We propose the following revisions to clarify the aforementioned inconsistencies:

- Clearly state in Section 4.0 that analyses of preserve adequacy anticipated the loss of 25% of natural lands.
- Clearly state that the 75% conservation level applies PAMA-wide, and not to individual properties. There are some properties on which development exceeding 25% is appropriate and others where less development will occur.
- Reconcile the amount of anticipated development in PAMA with the 114,000 anticipated preserve. If more than 75% conservation will occur, explain why this is necessary.
- Provide numbers for Other Development that includes development and mitigation in and out of PAMA.

7. **Preserve Contribution from Mitigation:** Section 4.1, Table 4.1, includes estimates that future development will contribute 38,555 acres of mitigation, presumably in PAMA. The analysis is summarized in Appendix F, with no pertinent numbers, acres or any other facts. The analysis used the Referral Plan assumed that development in or out of PAMA would develop to the densities shown in the draft General Plan. It is not known if clustering was used which is critical in developing a realistic estimate of how much mitigation land would be provided by development outside of PAMA. For example, a 100-acre parcel with a density of 1 du/5 acres could result in 20 homes. These could be on one-acre lots (20 acres of disturbance), two-acre lots (40 acres of disturbance), etc. What amount of disturbance did the County assume for its analysis of mitigation that would be provided? Please provide an expanded Appendix F that will allow the analysis to be easily understood by all reviewers.

8. **Project Design Flexibility:** There is little mention about the possibility of consolidating a development footprint to create a better preserve design, allowing some specific resources to be impacted, but resulting in an overall improvement in resource conservation. This is sometimes referred to as biologically superior alternative. In our review, we could find only one mention of such in the MSCP, none in the BMO and one in the RPO. Section 7.1, Project Mitigation, refers

to the BMO and states that avoidance of impacts; minimization and mitigation are the preferred methods (in order) for dealing with sensitive resources. Section 7.2, Project Design Criteria, discussed project design in one paragraph and spends the next two paragraphs discussing Preserve Design Criteria. There is only one mention of consolidating a development footprint and no mention of balancing impacts to get a better preserve. Section 7.3, Wetlands Conservation, spans four pages emphasizing avoidance and minimization with no discussion of allowing some impacts in return for a better preserve design.

Encouragement of project flexibility is hidden in proposed revisions to the RPO, in an area that probably would not be read by many applicants or County staff. If staff truly feels that clustering to provide a better preserve design is viable, then this concept must be encouraged and all of the mentioned sections of the draft MSCP revised.

9. **Framework Resource Management Plan:** This is one of the most confusing sections of the MSCP and is a perfect example of how the promises of the original MSCP have been greatly diluted or eliminated in this MSCP. Stewardship has been historically limited to access control, fence repair and trash pick up. This was the work that the landowner was to do to ensure that the resources were in the same condition at the time of conveyance as they were when the project was approved. The time between project approval and conveyance into a preserve was to have been relatively short (2-5 years).

Over time, the County has found various reasons to not accept any land into a preserve, even when funding sources were provided, finding that the acceptance of such land into County ownership to be more of a liability than a benefit, and greatly increasing the length of time that private landowners are responsible for "stewardship". In addition, the agencies have continuously increased monitoring and maintenance requirements, resulting in continuous and significant cost increases. The natural result of this is to make the County even more reluctant to accept land into a preserve system. The County is eager and willing to apply the regulatory burden and very unwilling to accept the responsibility of monitoring and managing the biological resources that it purports to be very important to "quality of life". This unwillingness is inconsistent with the original terms of the MSCP and must be addressed.

Additionally, the County is now re-defining stewardship, expanding the definition to include activities that were never part of stewardship, and shifting the cost of such activities to the landowner. These activities now include trail maintenance, invasive plant removal, fire safety, erosion control, hydrological management, landscaping, public education and biological inventories. In addition, signage and lighting, noise management and drainage into the preserve are more properly applied to development adjacent to a preserve through conditions of approval. There are no definitions or explanations about what the County is expecting landowners to do for any of these new tasks. It is also not clear if Section 2.0, Plan-wide Stewardship Guidelines apply to activities undertaken by private landowners prior to conveyance or not. Suggested revisions are as follows:

- Limit responsibilities to those that have historically been considered as stewardship, including access control, road repair (if there are roads), and fence repair.

- Please define what is expected of a private landowner during the interim period after project approval and prior to conveyance with respect to each of the listed responsibilities.

- Define biological inventories as the studies done with the CEQA document.

- Remove responsibilities that are more properly applied to adjacent development (signage, lighting, noise, drainage) to conditions of project approval.

- The County must agree to take land into the PAMA. This cannot be voluntary.

Section 8, Planning Segments, mixes resource management guidance with regulatory direction. Implementation will result in confusion and unnecessary limitations on use of private property as the regulatory section of the County will be applying the conservation goals. For example, "minimize impacts to the San Juan watershed" will likely be interpreted by regulatory planners as avoiding all development except that necessary to avoid a "taking". Zoning may allow 10 units on a parcel, but county staff will use this "conservation goal" and the Preserve Design Guidelines in the BMO to limit development to far fewer units or order to save the entire watershed. The same language might be interpreted by a preserve manager as a reason to limit trails and other uses that would bring people into the area. Suggested revisions are as follows:

- Remove all regulatory guidance language to Section 7, Policies and Regulations.

- Instead of "minimize impacts to the San Juan watershed"; consider language that would direct regulators to "consolidate development in the San Juan watershed as much as possible to reduce impacts."

Finally, delete all mention of **cultural resources**. Consultation with local tribes pursuant to Government Code 65562.5 is required when a General Plan or Specific Plan, or any associated amendments, are undertaken. The MSCP is neither and consultation should not be required under the plan since it is not a biological issue. The County should be consulting with local tribes as part of the General Plan update, and if they agree that prehistoric and historic sites should be monitored and maintained, a separate program should be prepared and funding identified. By its very name, the Multiple Species Conservation Program pertains to biological resources, and the permits being obtained are for biological resources.

10. **Database Accuracy:** The accuracy of the database (Section 3.2.2) remains an issue. It includes point locations that are up to 10 years old. Maps were based on this information, often erroneously. Examples include designating areas as Very High Quality habitat for arroyo toads or SKR based on erroneous reports. This has been pointed out to the County but no changes in

mapping have been made. This will lead to uphill battles for landowners who will be trying to develop relatively insensitive areas, battling incessantly with County staff and/or wildlife agencies who will insist that the species "might be there some day". For whatever reason, the County has consistently refused to correct maps.

Predictive modeling is discussed with no context. The Draft never describes why or how predictive modeling was used in the preserve design process, and how or if it will be applied to project design and review. Major errors have been pointed out to the County many times and are seemingly being ignored.

***We request that the database accuracy be verified and the mapping updated accordingly. We also request that predictive modeling be better explained and that the errors previously communicated be updated or some explanation given as to why they will not.***

**Conclusion**

In conclusion, the Alliance and the BIA remain interested in pursuing the promise of the North County MSCP, only if the plan maintains the balanced partnership as memorialized in the South County plan. Deviations, like those described above, have put our organizations in a position to reconsider its support for this effort given that the benefit is no longer present under the current draft terms and conditions as presented in this revised draft plan. We respectfully ask staff to consider our comments and make the recommended revisions so that balance can be restored to the plan and it can be completed in the timeframe desired by staff.

Sincerely,

Craig Benedetto
Executive Director
Alliance for Habitat Conservation

Scott C. Molloy
Public Policy Advisor
Building Industry Association of San Diego County

CC: Alliance Board of Directors
BIA Board of Directors
San Diego County Board of Supervisors
Eric Gibson, Director, DPLU
Chandra Wallar, Deputy CAO, LUEG

Please add to next MSCP briefing

Renee (2) Eric Jeff

Tom O Trish Maggie

This comparison chart attempts to track the original concern expressed by AHC and ~~BIA~~, the County's response to those concerns, and how the concern was addressed in the most recent draft of the North County MSCP (Feb. 2009). The Feb. 2009 document has been significantly changed and it is not possible to match the two documents section by section. In order to best use this table, you would need to use the AHC-BIA comment letter that the County marked up to identify each comment by number, and the County's comment letter.

| AHC-BIA Comment | County Response: 8-14-08 | Second Draft North County MSCP |
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| Must include sufficiently and significantly conserved vegetation. | No. Concept now covered by No Surprises (D-5) | No mention of significantly and/or sufficiently conserved vegetation. |
| Continues project-by-project review by agencies. | County says it does not. (D-10) | No change in process |
| County ordinances must be rewritten to support consolidation of development. | County says they will. (D-11, 12) | RPO now allows slope encroachment, wetland impact for Biologically Superior Alternative. Allows clustering as allowed by other rules. There is no mention of BSA in the MSCP or BMO. There is no discussion that consolidation of development within PAMA is very desirable, but that some individual resources may be eliminated In order to achieve a superior preserve. Use of "ordinance implementation" to get 20,000 additional acres of preserve counters any benefit achieved by allowing some slope and wetland encroachment. |
| MSCP must be the biologic mitigation for project impacts. Cannot allow additional mitigation for other CEQA impacts to be "piled on". Additional mitigation should only be for resources not covered under MSCP | County said that this can only be confirmed through the CEQA analysis for the MSCP. (D-13) | Sec. 5.4.2 implies that additional mitigation can be required under CEQA, as does 6.3.1. Clarification needed. |

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| such as non-covered listed species. | | |
| Conservation Analysis and Planning Unit Criteria have not been reviewed before. CA uses a nearly blanket 80% conservation level with little made to determine how much needs to be preserved. | County disagreed, saying that the Planning Units were development at the request of the industry. (D-14) | Conservation Analysis is being revised and was not released for review. Planning Units are now segments and have been moved into the FRMP. This section now mixes direction for management and monitoring with direction for regulatory action aimed at further preservation. |
| Conservation Analysis that 80% of everything must be saved has no basis in fact. | County disagreed. (D-17, 18, 19) | Little mention of Conservation Analysis. There is no discussion about the relationship between the Plan, BMO, exaction for preserve design purposes, and the Conservation Analysis. |
| Conservation Analysis and BMO allow some design flexibility, but resource agencies must agree. | County said that intent was to minimize Resource agency involvement, but that any "stepping outside the box" will require agency approval. (D-20) | Development consolidation is barely mentioned and implementation of such examples, etc. are not included. |
| No guidance about when ag. should be avoided and when it is considered to be the least sensitive area. | County said they would clarify. (D-21) | Clarification not provided. |
| Oppose endowment for stewardship. | Comment noted. (D-22) | County still wants endowment and has expanded the duties that are in included as stewardship. County not estimates stewardship will cost $100/ac while management and monitoring are estimated to cost $50/ac. |

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| Recommended that a more detailed management and monitoring plan be done, with cost estimates to establish the basis for the budget. | County says they will consider. (D-23) | Framework Resource Management Plan does provide more detail. However, Definition of "stewardship" is expanded. Document does not define what county expects landowners to do accomplish each new duty, which will probably be the basis for calculating the required endowment. Costs to land-owners will certainly increase. The FRMP does not say if the new Plan-Wide Stewardship Guidelines will apply to private property. |
| Provide back-up for cost estimates. | County says that they did. (D-24) | No comment on cost estimates. Those with experience in stewardship costs should review and provide input with respect to the accuracy of the estimates used in the MSCP. |
| How can mapping and other database errors be corrected? | County says that they will rely on actual resource mapping. However, they have incorrectly identified some areas as being of very high quality habitat for arroyo toad meaning that the ag. in the area must be retained. (D-25) | Still need answer. Draft contains no mention about what County will do under such circumstances. |

*Section 3.2.2: The accuracy of the database remains an issue. It includes point locations that are up to 10 years old. Maps were based on this information, often erroneously. Examples include designating areas as Very High Quality for arroyo toads or SKR based on erroneous reports. This has been pointed out to the County and no changes in mapping have been made. This will lead to uphill battles for landowners who will be trying to develop relatively insensitive areas, battling incessantly with County staff and/or resource agencies who will insist that the species "might be there some day". County has consistently refused to correct maps.*

*Predictive modeling is discussed with no context. The Draft never describes why or how predictive modeling was used in the preserve design process, and how or if it will be applied to project design and review. Major errors have been pointed out to the County many times and are seemingly being ignored.*

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| All roads provided by the TIF should be defined as covered projects. | County will pursue coverage for TIF roads (D-27) | No mention of Circulation Element or TIF roads. |
| San Luis Rey Park is included for no apparent reason | County says that some portions that are already acquired are conserved and counted In the Baseline. (D-26) | No change. |

Comments and their responses, D-27 through D-33 were largely editorial and do not need to be addressed in this table.

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| County should aim for as few preserve managers as possible. | County said that a single framework management plan would provide continuity. (D-34) | No change, and no recognition that this is more desirable, nor recognition that SANDAG is beginning to understand that regional preserve management and monitoring should, at least, be coordinated. |
| County is attempting to get 80% of PAMA, not 75%, for free | County did not address the 80%, and said that they have already stated a commitment to allow development in PAMA. (D-35) | No clarification on 80% issue. County does say that they analyzed preserve as if 25% was developed. In addition, Section 4 estimated impacts are still not clear. They show 80% conservation, 75% or 83.3% depending on which numbers you look at. In addition, the vast Majority of development anticipated In and out of PAMA is in PAMA. Only |

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| | | 6,488 acres of development is anticipated outside of PAMA. This leaves the majority of the preserve to be provided by development inside PAMA which is totally discouraged. Finally, combining the GP provisions with this MSCP reduces allowed development to the point that it will be largely infeasible. |
| Relationship between conservation analysis is not clear. Basing a preserve design on a predictive model is dangerous since the model can be shown to be quite inaccurate. | County said that they were revising the Conservation Analysis, and would explain role of potential, predicted habitat. County also noted that they would not regulate land if species were not present. (D-36) | Revised Conservation Analysis was not released with the new Draft. |
| Draft required at least 75% of every property in the PAMA, in spite of saying verbally that the 75% was an overall goal and not to be applied individually. | County said they would clarify. (D-37) | Cannot find this clarification. |
| As written, any land can be regarded as sensitive and in need of preservation. Need guidance on development siting. | County said that they would add language regarding how development should be sited. (D-38) | Clarification not provided. |
| County did not define "preserve design strategy". | County said that they would change the language. (D-39) | Language changed. |
| Preserve Design Criteria are vague and provide little guidance about where development should occur. Guarantee 75% development area. | County says that these refer to the overall preserve design; project specific criteria are in the BMO. No response on 75 %.( D-40, 41). | Preserve Design Criteria are still applicable only to very large areas and provide little project specific guidance. BMO criteria are still very vague and sweeping. |

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| County wants 2,000 feet for corridors. | County says that the 2,000 feet is for a linkage rather than a corridor. (D-42) | County continues to want 2,000 feet for a linkage. Need to point out that a linkage that is 1,000 wide and 1,000 feet long is 23 acres, which provide live-in habitat for many species. |

*Chapter 4-Impacts, is new. Section 3.1 of the Draft stats that approximately one quarter of the natural upland habitat is expected to be developed. Table 1 in Chapter 4 states that total development of natural habitat in the Plan Area is anticipated to be 36,780.5 acres for hardline and future projects. This section states that approximately 28,255 acres of development is expected on the 136,835 acre of natural lands (this is different from natural upland habitat) that are in the proposed PAMA, preserving 80%. 75% of 136,835 acres is 34,208.75 acres. It is also stated that the anticipated size of the preserve is 114,000 acres. If you subtract 114,000 from 136,835 acres, you get a development area of 22,835, or 16.7% of PAMA. Exactly how much land is the County proposing to allow to develop within PAMA?*

*This chapter also states that no more than 13,000 acres would be cleared in the PAMA under the clearing exemptions. There is no explanation about whether this 13,000 is included in the 34,703 acres of total future development or is in addition to it. On page 32, the Draft states that the 34,703 acre impact estimate includes single family homes and large discretionary projects. This would place the 13,000 acres of impact due to clearing for single family homes within the estimated PAMA impacts of 28,255 acres. This would mean that only 15,255 acres of impact due to "large" discretionary projects is anticipated in PAMA.*

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| The anticipated size of the preserve and the amount already conserved needs to be simply stated | County says they will clarify. (D-43,44) | As noted above, numbers are still confusing. |
| Users of the MSCP were directed to three different documents to determine what requirements and regulations are applicable. | County says they cross-referenced and does not address the "user-unfriendly" nature of of the document. (D-45) | New document is more understandable but clarity still needs to be improved as noted throughout this comparison. |

Comments D-46, 47, 48-52, dealing with SR-76 and Sufficiently/Significantly Conserved Vegetation are addressed elsewhere in this table.

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| Relationship between BMO and RPO must be clarified. | County says that they did. (D-53) | New draft explains relationship much more clearly. |

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| County wanted hardlines to only apply to a single project with an MSCP amendment required for any new project that was still within the original footprint. | County agreed to reword. (D-55) | Clarification has been done. |
| Minor adjustments in PAMA and hard line projects must be allowed. | County said that they would pursue standard procedures for such changes. (D-57) | New Draft includes procedures for PAMA changes, including for hardlines. Language should be repeated in BMO. |
| Comments D-58, 59, 60, and 63 are editorial and do not need to be addressed here. | | |
| State Linkage and corridor design criteria in the MSCP. | County refused and said that they would continue to refer reader to the BMO. (D-61, 62) | Criteria are in MSCP and BMO, but continue to be very vague and sweeping. |
| Allow some impacts to wetlands to achieve better preserve design. | County said that they would. (D-64, 65) | New draft does allow minor encroachment into wetlands and slopes. However, there is no mention of a biologically superior alternative, nor any mention of allowing some Tier 1 or sensitive species to be taken to achieve a consolidated development footprint. |
| Comments D-66, 67 dealing with wetlands are addressed elsewhere. | | |
| Use federal definition of vernal pools. | County refuses. (D-68) | Old definition continues to be used. |
| Species avoidance requirements were included in Vol. 2, the Conservation Analysis, even though County staff kept saying that the CA was non-regulatory. | County said that they would clarify. (D-70) | New draft has very little mention of CA. It is not clear how or if the CA will be applied in any regulatory fashion. |

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| "Suitable" Quino habitat was required to be avoided whether occupied or not. | County said that regulations would only apply in PAMA, and mitigation would only be applied if habitat was occupied. (D-71) | Cannot find this requirement in the new draft. Must re-check CA if it is released for review again. |

Comments D-72-74 addressed preserve design. County has revised language as requested.

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| Requirements were included that required ridiculous measures to alleviate edge effects, including washing equipment entering a site. | County said that they would modify. (D-75). | Section has been eliminated. |
| Agricultural areas are often the least sensitive area in which to locate development, but the draft keeps saying how valuable agriculture is for various reasons. Please provide guidance for when ag. should and should not be preserved. | County said that they clarify. (D-76) | New draft states that while ag. lands may be of low value, they can still be valuable for many reasons. This does not provide clarification. |
| Language was too open and could end up with undercrossings being required for any drainage no matter how small. | County said that types of crossings were specified. (D-77) | Language is still vague and could require undercrossings for the Smallest of drainage crossings. |

Comments D-78-88 have already been addressed or for editorial changes. They are not addressed here.

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| Document states that removal of land from the County's jurisdiction will still require that the terms of the MSCP be met. County cannot constrain another jurisdiction. | County states that they will insure that MSCP is enforced in another jurisdiction through Annexation Agreements. (D-89) | New language is much clearer in terms of what land removal from County Jurisdiction could mean. |

Comments D-90-92 and 94-98 have already been addressed.

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| Transfer of preserve land is voluntary and will require | County will not accept any requirement that | No change, except that the County has |

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| an endowment to cover stewardship in perpetuity. | they accept preserve land and will not eliminate their requirement for an endowment. (D-93) | now expanded the definition of stewardship to shift even more the overall cost to private landowners. |
| The amount of land to be contributed by all three major participants must be clearly stated. | County stated that they had already done so. (D-99) | The new document is much clearer, but there appear to be different amounts listed in different places in the document. It is not clear if the 20,000 acres that the County will provide are same as the 20,000 acres currently being purchased by DOD. |
| A number of comments noted seeming discrepancies in the amount of land that was to be preserved and exacted. | County said that the correct numbers were 106,780 acres of natural habitat plus 7,022 acres of ag. and disturbed. (D-100, 102,103, 110) | Section 4 still states numbers that are either wrong or not understandable. Development in PAMA is variously estimated at 28,255 acres and 22,835 acres. 75% of PAMA = 34,208 acres. |

Comments D-111,112, 114, 116 are addressed elsewhere.

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| Public agencies to acquire 39,369 acres while | County did not really address the question | Public agencies will contribute 31,776 |

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| Figure 1 showed 18,850 acres. Table 5-2 showed that public agencies would provide 40,461 acres, while private would provide 65,496 acres. Total: 105,957 acres | about how this was determined, or which number was correct. (D-113) | acres, regional sources will provide 23,994 acres and private will provide 50,104 acres. Total: 105,874 However, County says that they will partner with DOD to acquire 20,000 acres. It is not clear if the 20,000 Is included in the County's share. |

*Chapter 5 includes estimates of administrative costs ranging from $9.40-$10.75 per acre per year. County portion of administration costs on Otay Ranch are $46.75. Better ask County to check numbers! County estimates stewardship at $100/acre, and management /monitoring at $50/acre. Chapter 5 does not include a firm commitment to funding for acquisition, management and monitoring. Resource agencies have said that the plan is not acceptable in this form.*

*It is still not clear how much land the County, State and Federal governments will provide. It continues to be lumped. County is anticipating that a significant amount of land will come from Transnet.*

*Section 5.4.2 distinguishes between land set aside as mitigation for development, and land set aside in order to make preserve design findings. What is the difference? It appears that the County is making every effort to eliminate the concept of "excess mitigation".*

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| County wants landowners to provide endowments in perpetuity for stewardship. | County says private funding of stewardship is required. (D-115) | County has expanded definition of Stewardship (Table 1-Appendix H) If County uses these to define the endowment, costs to landowner will skyrocket. **FMRP now includes provisions for management of cultural resources.** |
| Language in the BMO called for avoidance of impacts. Such language has been interpreted to mean that all impacts must be avoided (RPO-wetlands). We asked that it be changed. | County agreed to change. (D-117) | Language has not been changed. |
| Sections 7's are not exempt from BMO while | County said that they would consider | No change made. |

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| Section 10's are. The requirements under both are often very similar, but the language would allow a second bite at the apple for Section 7's. | such a change. (D-118) | |
| Preserve Design Criteria did not really address minor boundary adjustments which are allowed in The South County Plan in terms of criteria against | County said that the Preserve Design criteria were nearly identical to Section 5.4.2 of South County Plan (D-119) | Sections regarding PAMA adjustments are more clearly written. No change made in the Preserve Design Criteria which remain vague and sweeping. |
| Preserve Design Criteria provide little guidance for project design. | County said that they add clarification language. (D-120) | No change in Preserve Design Criteria. |
| Project Design Criteria do not address consolidation of development or possible trade-offs to encourage a biologically superior design. | County said that trade-offs would be necessary and that the exception policy could be used if all criteria could not be met. However, the exception policy is really aimed at projects where compliance would eliminate economic use. (D-121) | No change in Project Design Criteria. |
| Comments D-122, 123, 125 are addressed elsewhere. | | |
| Wetlands avoidance is required even when it | County said they would not change RPO | A new exemption is added to RPO |

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| does not make sense. | (D-124) | allowing wetland and steep slope Impacts when a biologically superior alternative is the result. This is confusing at best as there is no mention of a biologically superior alternative anywhere in the MSCP or BMO. |
| The relationship between habitat-based mitigation and species-based mitigation is not clear. | County said that they would clarify. (D-126) | No clarification was made in MSCP, but has been made in BMO. |
| No justification is provided for 80% avoidance of narrow endemics. No guidance provided for determining population viability. | County did not address the 80% issue, but did say that they would provide guidance for determining viability. (D-127) | County still does not justify 80% and did not provide any guidance for determining viability. In addition, the MSCP only allows mitigation for narrow endemics outside of PAMA for "significant" populations while the regulations require set-aside of any population. |
| Arroyo toad limitation should be based on actual Surveys. | County agreed to clarity. (D-130) | County has clarified. |
| Appendix B: Planning Units. Several questions were asked about this section In order to better understand exactly how the County intended to use this section. | County responses are not relevant as this section has been significantly revised and moved to the Framework Resources Management Plan (FRMP). (D-131 to 143) | Planning Segments have been added to the FRMP. HOWEVER, language is still included that is regulatory in nature (Preserve Design). This must be moved To avoid any confusion about how the language in this section is used. You Can't mix project design and management. |

The definition of "stewardship" has been greatly expanded to include fire safety, erosion control, hydrological management, public education, biol. Inventories, etc. It also includes ASMD guidelines that include "plan-wide stewardship guidelines". If these are used to define everything you must do before you dedicate land, or if this is what your endowment is based on, your costs will skyrocket.

All remaining comments are on the Conservation Analysis. County has not released that document. They have said that they continue to work with resource agencies on re-formatting, making the goals and objectives clearer, and tying the goals and objectives to the FRMP and the planning segments.

San Diego Mountain Biking Association

Friday, April 3, 2009

Mr. Thomas Oberbauer
Chief, MSCP Division

Mr. Jared Underwood, PhD
Land Use/Environmental Planner

County of San Diego
Department of Planning and Land Use, MSCP Division
5201 Ruffin Rd., Suite B5
San Diego, California 92123

Re: Comments on public review draft North County MSCP

Mr. Oberbauer and Mr. Underwood,

Thank you for the opportunity to comment on the draft North County Multiple Species Conservation Program (NCMSCP). The San Diego Mountain Biking Association (SDMBA) is a nonprofit, volunteer organization representing the interests of off-road cyclists and other non-motorized trail users in San Diego County. SDMBA's goal is to represent the mountain biking community with a coordinated and responsible voice to other trail users, land managers and policy makers. SDMBA is committed to reaching out to diverse stakeholders to promote dialogue and understanding for the betterment of all open space and biological resources in San Diego County.

SDMBA wishes to make the following five key points, which are further elaborated upon in this comment letter.

1. **Public access**. Public access for passive recreational use, including mountain biking, must be further developed in the NCMSCP and include specific, affirmative goals or objectives, policies and implementation measures.
2. **Quality of life**. More emphasis on the social goals in the NCMSCP is needed, including specific goals or objectives, policies and implementation measures, to promote quality of life.
3. **CEQA adequacy**. The forthcoming Environmental Impact Report (EIR) must address how public access will be provided, thoroughly address public access in the project description, include an accurate baseline inventory of existing trails and analyze the impacts of closures—temporary or permanent.
4. **Trail design**. Well-designed, human-scaled trails promote quality of life and environmental stewardship. Modern trail design criteria should be included in the NCMSCP.
5. **Funding support**. Public support will be needed for the long-term funding obligation that will be incurred to manage and enhance open space lands preserved under the NCMSP.

SDMBA supports the comprehensive approach taken in the draft NCMSCP to protecting and preserving biological habitat in open space lands. SDMBA recognizes that because there are biological resources proposed to be protected by the NCMSCP, the planned open space provides an opportunity for appropriate public access. Public access is a vital component of environmental stewardship. This is an area of the draft NCMSCP that needs significant work. Criteria are needed that are reliable and measurable for achieving and preserving public access in partnership with environmental preservation objectives and requirements.

SDMBA is pleased that the NCMSCP lays out not only biological and economic goals, but social goals well. This is exemplified by the emphasis on the preservation of quality of life in San Diego County as an important component of the NCMSCP. Recreational use of open space is an important social goal. However, SDMBA is concerned that ambiguously defined social goals and the potential closure of open space to passive recreational uses will ultimately lead to a lack of public support for implementation of the plan. We strongly urge the affirmative inclusion of public access for passive recreational uses—including non-motorized mountain biking—as an integral component of the NCMSCP. The NCMSCP should provide adequate plans and metrics for measuring quality of life goals.

The specific monitoring and management guidelines for species and habitat conservation generally allow for recreational public access. However the specific implementation and management policies and guidelines delineated in the Framework Resource Management Plan (Appendix G) are unfortunately anti-public access. The Framework Resource Management Plan allows for all new preserves to be completely closed to public access for up to five years while baseline inventory and management needs are accessed and developed. This is absolutely unacceptable as it undermines the goals of the plan and severely hampers any public support and stewardship efforts.

The effects of closing a recreational resource to public use must be assessed and, if found to be significant, mitigated. SDMBA expects that the Draft Environmental Impact Report (EIR) prepared for the NCMSCP will fully address the potential impacts to existing public access and recreational uses within the proposed preserve areas. The project description for the EIR should very affirmatively discuss public access, in meaningful detail—as an integral and beneficial component of the NCMSCP to streamline subsequent environmental review of future trails and protect public access. SDMBA looks forward to reviewing the EIR and revised NCMSCP when those are available. SDMBA requests to be included on the list to be notified when the EIR is released for public review.

Standards for the design, construction, maintenance and allowed uses of new trails within the preserve areas should be considered in the NCMSCP. Long-established programs and studies demonstrate that thoughtful, managed trail plans are a vital part of environmental preservation and management. Additionally, studies have found that although mountain biking allows for traveling longer distances, its impact is substantially similar to hiking. Therefore, passive recreation must be explicitly defined to include mountain biking.

SDMBA has recently become part of a stakeholder group advising SANDAG's Quality of Life Ad Hoc Steering Committee. SDMBA believes that public access on sustainable, human-scaled

trails is a vital part of our region's quality of life. Should SANDAG decide to place the Quality of Life funding initiative on the ballot, we believe that meaningfully committing to public access is vital to achieving a successful vote on the proposed funding initiative.

Please feel free to contact me anytime at 858-442-7090 and minette@sdmba.com; or Bill Porter at 760-521-5597 and bporter@sdmba.com. Thank you.

Sincerely,

**Minette Ozaki, President**
**San Diego Mountain Biking Association**

cc: Supervisor Dianne Jacob, Chairwoman, County of San Diego, District 2
Supervisor Pam Slater-Price, Vice-Chairwoman, County of San Diego, District 3
Supervisor Greg Cox, County of San Diego, District 1
Supervisor Ron Roberts, County of San Diego, District 4
Supervisor Bill Horn, County of San Diego, District 5
Mayor Lori Holt Pfeiler, City of Escondido and Chair of the SANDAG Quality of Life Ad Hoc Steering Committee
Sachiko Kohatsu, Office of Supervisor Pam Slater-Price
Chandra L. Wallar, General Manager/Deputy Chief Administrative Officer, Land Use & Environment Group
Gary Gallegos, SANDAG
Rob Rundle, SANDAG
Keith Greer SANDAG

**SDMBA Comments on the**
**DRAFT North County Subarea Multiple Species Conservation Plan**

April 3rd, 2009

## OVERVIEW OF COMMENTS

The San Diego Mountain Biking Association (SDMBA) would like to praise the developers of the draft North County Multiple Species Conservation Plan (MSCP) for laying out not only biological and economic goals, but social goals well. This is exemplified by the emphasis on the preservation of the quality of life in San Diego County as an important component of the MSCP. Recreational use of open space areas falls within the bounds of the stated social goals. However, the SDMBA is concerned that ambiguously defined social goals and the closure of open space to passive recreational uses will ultimately lead to a lack of public support for implementation of the plan. We strongly urge the inclusion of public access for passive recreational uses as an integral component of the MSCP.

While the MSCP does an exceptional job of laying plans, programs and procedures to achieve the biological and, to a lesser extent, the economic goals, quality of life and, more specifically, passive recreational use, are barely given more than a footnote. The MSCP does not provide adequate plans or metrics for measuring the success or failure of the quality of life aspects of the plan. This lack of an adequate plan and objective milestones for monitoring the status of "Quality of Life" indicates that there is little chance this plan will achieve any of the ambiguously defined social goals.

The well thought out and specific monitoring and management guidelines for species and habitat conservation generally allow for recreational public access. However the specific implementation and management policies and guidelines delineated in the Framework Resource Management Plan (Appendix G) are extremely anti-access in nature. As currently written the Framework Resource Management Plan allows for all new preserves to be completely shut off from public access for up to five years while baseline inventory and management needs are accessed. This is absolutely unacceptable. The effects of closing a recreational resource to public use must be assessed and, if found to be significant, mitigated. SDMBA expects that the Draft Environmental Impact Report (EIR) prepared for the North County MSCP will fully address the potential impacts to existing public access and recreational uses within the proposed preserve areas. The existing and proposed status of all points of access and trails within proposed preserve areas must be disclosed plans for the continued maintenance and operation of trails must be discussed. Finally, standards for the design, construction, maintenance, and allowed uses of new trails within the MSCP preserve areas must be included in the Draft North County MSCP.

The Framework Resource Management Plan is disappointing in the overall tone that passive recreational use is an impact to be mitigated. In fact, the entire County Trails Program is listed in Section 4 of the plan as an impact. SDMBA strongly disagrees with this conclusion. If the North County MSCP is to become a landmark model for usage nationally, it must accommodate passive recreational users in a sustainable way, not shut them out or treat public access as an impact to be mitigated. Passive recreational users are a species too, and many of the open space areas historically used for passive recreation in a natural setting have been lost to development. Most public users will not only use the habitat in an environmentally sensitive manner, but will also provide a net habitat benefit by volunteering to patrol and maintain the preserve properties. With the use of modern trail design and user management science, impacts to the land and species can be minimal. Responsible public use also deters illegal abuse. Partnering with the user groups will create a level of stewardship that the public and land management agencies currently identified to manage this plan cannot possibly achieve regardless of the size of their staff or budgets allocated.

Trails built to modern trails standards, such as those used by US Department of Agriculture, the US Forest Service, as well as the International Mountain Biking Association, are excellent vehicles for not only minimizing habitat impact, but also to provide a means for habitat restoration while enhancing the quality of life for all passive recreationalists. This document and the referenced documents describe just a few of the many scenarios where responsible passive recreational use coupled with modern trail design and management science can and have achieved quantifiable habitat restoration.

If the North County MSCP wishes to use public funds, the plan should include enabling objectives, milestones, and metrics that would give the public a sense that public funds used for this effort have a reasonable chance of success in providing for social goals, including public access. As written, there is little chance that public funds would be wisely used towards reaching the social goals of adequately protecting and enhancing the quality of life for residents and visitors via passive recreational access.

The most worrisome portion of the plan is the Framework Resource Management Plan (Appendix G) still under development. While positive in tone towards passive recreational use in its introduction, the combination of the policies delineated in the Interim Management and Baseline Inventory of Management Needs sections sets up a system where the public as a general rule will be locked out of all new preserves for up to five years while a baseline inventory of the management needs is performed. Considering nearly all areas identified for new acquisitions have some level of existing recreational use, this is devastating. **It is absolutely unacceptable**.

The concept of locking out the public while the baseline inventory of management needs is conducted is unsatisfactory from a public access perspective and also appears to be scientifically unsound, even from a laymen's perspective. As described in the plan, the purpose the baseline inventory of the management needs is to accurately account for existing conditions at the time of preserve acquisition. Passive recreational use is often a normal pattern of use within all of the core areas of this plan. If a scientifically accurate baseline inventory can take up to five years to accomplish, then the existing passive recreational usages and its interaction and influence on the

habitat and the species contained within that habitat must be maintained throughout the baseline inventory process, otherwise the baseline inventory will be flawed.

The San Diego Mountain Biking Association would like to thank the County and all agencies involved with the development of this plan for providing the public a review of these early draft documents despite the critical Framework Resource Management Plan (Appendix G) still being under development. We look forward to the public review period of the fully developed version of the Framework Resource Management Plan. Currently it is impossible for the public to comprehensively comment on the plan. Public review of the fully developed Framework Resource Management Plan is needed before final positive or negative support from the public can be adequately ascertained.

The San Diego Mountain Biking Association, as stakeholder in the habitat conservation of San Diego County, looks forward to working with the developers and other stakeholders of the plan to modify the current draft plan to support the successful achievement of all of its goals.

## SPECIFIC COMMENTS

### CHAPTER 1

1.2 paragraph 1 regarding social goals should read, “Protect and enhance the quality of life" verses merely protect.

1.2 Paragraph 3 should read "Preservation of and responsible public access to open space and habitats" verses merely preservation of open space.

1.2 Paragraph 4 (Page 3) – The County's commitment to opportunities for children should include natural trails in a preserve style environment.

1.3 Paragraph 1, Bullet 4 (Page 3) – The purpose and need statement here is good. The public should support such solutions if there is plan in place to adequately use any public funds to provide recreational use.

### CHAPTER 2

General comment on the entire 2.4.1 Section: While just a couple of specific open space parks are listed below where existing passive recreational access has been omitted, this is certainly not an inclusive list. The recent track record of land managers in the execution of the existing San Diego MSCP indicates that existing passive recreational use is often not properly documented. It should be assumed that some level of passive level of existing passive recreational use is occurring in all current and future open space preserves.

2.4.1(3) Escondido Creek Open Space – This paragraph states that no public uses have been identified. However public recreational use has been a long standing activity in this area by hikers, bicyclists and equestrians. It is also vital recreational link between the Rancho La Costa Preserve and the Elfin Forest Preserve.

2.4.4 (page 12) – Both the Margarita Peak and Rancho La Costa areas have had long standing use by bicyclists.

### CHAPTER 3

3.2.6 Public Participation (pages 22-23) – While a number of public participation items were listed here and in the acknowledgements section (Chapter 12) there are no user groups listed. There are eight community planning groups listed but there are no specific user groups identified as being consulted throughout this process. (e.g. The Backcountry Horsemen, the San Diego Mountain Biking Association, the Multiuse Trails Coalition, the San Diego County Trails Coalition, etc…)

**CHAPTER 4**

4.4.2 County Trails Program

The County Trails Program is listed as a future impact. This paradigm is fundamentally misguided. Recreational opportunities are included as part of social goals of the plan. An effective trails program coupled with trails built to modern environmentally sensitive and sustainable guidelines can not only minimize future impact but actually reduce current impacts and provide quantifiable habitat restoration.

A common problem throughout the county is the use of old jeep and fire roads that were summarily designated as trails. These "trails" are often quite wide with 12-15 feet being common. These trails are also typically quite steep and erosion prone. Additionally these trails require excessive annual to semi-annual maintenance to keep in proper order. A more modern trail science approach should be used in the North County MSCP. Trail standards such as those used by the US Forest Service, US Department of Agriculture, and the International Mountain Biking Association provide the means to achieve increased habitat restoration while supporting the social goals of this program.

## THE COUNTY TRAILS PROGRAM IN REGARDS TO THIS PLAN

While the Community Master Trails Plan (Section 7) states it will coordinate with various communities and management agencies for trail access and connection to preserve lands, it basically absolves itself of management responsibility of trails within preserves. The County Trails Program puts most of the responsibility on the individual land management agencies. This arrangement allows for each land management agency to devise and use their own methods for trail criteria, design, and construction. Some of these land and public agencies do not use environmentally sound or modern trail science in their approaches.

A specific example is the Del Dios Highland "Trail" that is part of the Del Dios Highlands County preserve which is to become part of the NCMSCP. In 2007 the County Department of Parks and Recreation opened a new "trail" that is a 1.4 mile long gravel and dirt road that is roughly 20 feet wide with an average grade of 20%. This road being passed off as a trail offers little in the way of a quality outdoor experience and it is an environmental and scenic blight that needlessly destroyed habitat. Rough estimates show about 148,000 square feet of earthen habitat impact has occurred with the Del Dios Highlands Trail. If this same trail would have been built using modern trail science it would have been approximately 3 miles long and 4 feet wide with mild to moderate grades that would have much less future maintenance and erosion concerns as the current "trail". Additionally this trail would have provided a high quality outdoor trails experience while having approximately 85,000 less square feet of earthen impact than the currently designated "trail".

The Del Dios Highlands "Trail" is a good example of well intended people and agencies using outdated and environmentally unsound trail practices. Many of the current local municipalities and the county trail design guidelines appear derived from a public works background centric to circulation volumes and lowest common denominator approaches to user densities, experiences desired, and overzealous risk mitigation. These all come at the cost of habitat and quality user experiences. The North County Multiple Species Conservation Plan should not allow this myriad of habitat unfriendly approaches to be followed. Instead it should include or call out for adherence to modern trail design and construction guidelines that coupled with habitat conservation and restoration will create high quality outdoor experiences for all passive recreation users while providing a net habitat benefit. The US Department of Agriculture, the US Forest Service, as well as the International Mountain Biking Association all have standards that will better support the conservation and quality of life goals of the plan.

**CHAPTER 5**

5.2.4 (Paragraph 2, Page 45) – The adaptive management fails to address the monitoring and management of achieving social goals, such as opportunities for children and recreational access. If social goals are to be part of this plan the monitoring and management of the progress towards those goals should be addressed.

5.3.6 (Paragraph 9, page 54, Other)

The San Diego Mountain Biking Association has been the leading trail advocacy group in San Diego County for a number of years and performs thousands of hours of volunteer trail work, advocacy, and habitat restoration projects each year. A sizeable percentage of that effort has already occurred in areas that with the North County Plan such as Daley Ranch and the Rancho La Costa Preserve. We look forward to continue to contribute to habitat restoration throughout the area covered by the North County MSCP.

5.4.2 Permanent Resource Protection (Paragraph 5, page 57)

The opening statement (quoted below) is far too vague to be of use in an objective management manner. The term "significantly impact" is not defined and leaves far too much room for interpretation which could be the detriment of responsible public access.

> " Public access on preserved lands will be considered and incorporated wherever possible, provided it will not significantly impact the biological and cultural resource values to be protected by the conservation of that land."

Additionally, within the same paragraph concerning the selection of future mitigation sites, a small percent of impact should be considered for future trails. This is not intended to say that all new preserve land will have new trails, but as a planning measure it should always be accounted for.

**CHAPTER 7 (Policies and Regulations)**

GENERAL COMMENT: Trail related policies should have its own section within this chapter. Current trails are scanty mentioned.

7.7.3 (C) page 102 – Open Space Parks. County-owned lands proposed to be incorporated into the North County Preserve system are listed as important to obtain the County's mission to provide residents with superior services that respond to their needs and enhance their quality of life. Under this plan, the County will be granted incidental take authorization for existing or specified described in Chapter 2 of the plan. However, Chapter 2 does not fully account for all of the current usages in and near those open space parks. This paragraph also includes the ambiguous term "appropriate recreation" versus "passive recreation". This paragraph also states that these parks are permitted for incidental take consistent with the FRMP (Appendix G) which is not fully developed yet. A full public review of this statement is impossible without the completed FRMP.

**CHAPTER 8 (Legal Responsibilities and Administrative Procedures)**

8.1.3 Compliance with Mandatory Requirements

This section and (pages 105-107) list the FRMP (Appendix G) numerous times. The FRMP is still in development so it is impossible to make comprehensive comments on this important section.

8.2.2 Federal and State Participation (pages 108-109)

This section fails to mention the wildlife agencies need to manage their lands for passive recreational use in support of achieving the social goals of this plan. The agencies must have some responsibilities delineated in the plan in support of the social goals. Both the USFWS and the CDFG have fostering public use, knowledge and enjoyment of lands statements throughout their mission statements and publically available documents and they must bear some burden for the success or failure of the social goals of this plan.

8.2.5 Implementing Agreement

The implementing agreement needs to include the responsibilities for passive recreational use.

8.3.1 Tracking of Conservation and Impacts.

There is no mechanism for the tracking of items related to the social goals of this program. (i.e. Passive Recreational Use)

## CHAPTER 9 Preserve Management and Monitoring

GENERAL COMMENT – This chapter makes numerous references to the FRMP which is still in development. It is impossible for the public to make comprehensive comments on this important section without the completed FRMP available to the public.

9 (Paragraph 2, page 129) – This entire paragraph is problematic. As shown by previous land acquisitions by public entities, those entities are often not fully aware of the historical usage of those lands. Passive recreational and otherwise responsible land usages are often not accounted for as "existing". In keeping with the social goals of this plan the first sentence should read. "Passive recreational land uses within the preserve system will continue, and existing ownerships are expected to be maintained…"

The last sentence uses ambiguous terms such as: "maximize public safety" and "minimize management concerns and biological or cultural resource impacts". This sentence is easily construed as "anti-access" where "conservation" does not want to be bothered with the public. Managers of this plan should be concerned with achieving all goals of the plan: biological, cultural and social.

9.1 (page 130) – Public Access/Recreation (for stewardship and adaptive management) should be added to both listings.

9.3.1 (paragraph 2 page 132) – Second sentence should read, "Biological, cultural, and social resources….." Once again the management and monitoring should support all of the goals of the plan not just the biological interests

9.3.1 (paragraph 5, page 133) – The third sentence should read "The County is responsible for ensuring management and monitoring of individual preserves and the attainment of conservation and social goals to include passive recreation."

## CHAPTER 11 DEFINITIONS

Pathways (Page 143). The third sentence should read "Pathways are intended to serve as both circulation and low-quality recreation,….."

REASON: Pathways are 10-15 feet in width and offer little natural outdoor experience value. Their excessive width and allowable grade and composition standards are not complimentary to habitat restoration and therefore terminology should be used that discourages its use except where there is a documented history of extremely high volume usage combined with numerous documented trail user conflicts.

Trail (page 145) "Soft-surface facilitates" should be replaced with "A narrow earthen path ……
REASON: Soft-Surface trails are typically not conducive to multi-use. Thick covering of soft surface materials such as bark, mulch and other organic matter typically impede or produce a low quality experience for bicycle usage.

## CHAPTER 12 ACKNOWLEDGMENTS

(Pages 147 and 148) – While a number of public participation items were listed in the acknowledgements section there are no user groups listed. There are eight community planning groups listed but there are no specific user groups identified as being consulted throughout this process. (e.g. The Backcountry Horsemen, San Diego Mountain Biking Association, Multiuse Trails Coalition, San Diego County Trails Coalition, etc…)

## APPENDIX A Biological Mitigation Ordinance

Section 86.513(c) EXEMPTIONS

Trails should be included.

Section 86.517(b)(c)(d) Design Criteria

Passive recreation trail design should be listed for both the preserve(b), regional linkage(c), and Corridor(d) criteria.

## INDEPENDENT SCIENCE ADVISORS' REVIEW PART I and PART II

We are disappointed with the inclusion of the both parts of this review without an accompanying review by user groups. The recommendation and reviews provided do not fully support all of the goals of the plan. It lacks any input on the cultural, economic and social goals of the plan.

Trails are needed to fulfill the social goals of the plan. The recommendation to require a recreation management plan prior to the establishment of permanent access is anti-access in nature and gives the impression that people are problems. Recreational access and habitat stewardship go hand and hand.

If the North County Multiple Species Conservation Plan is to become a landmark model for usage nationally, it must partner with passive recreational users, not shut them out or merely treat the public as an impact to be mitigated. Passive recreational users are a species too. They are a species uniquely qualified to not only use the habitat in an environmentally sensitive manner, but provide a net habitat benefit through the use of modern trail design and user management science. Responsible public use deters illegal abuse. Partnering with the user groups will create a level of stewardship that the public and wildlife management agencies currently identified to manage this plan can not possible achieve.

8.5(d) Regulate recreational use of protected areas. See above

## APPENDIX E – HARDLINE DEVELEOPMENT PROJECTS

GENERAL NOTE: As shown by previous land acquisitions by public entities, those entities are often not fully aware of the historical usage of those lands. Passive recreational and otherwise responsible land usages are often not accounted for as "existing". In keeping with the social goals of this plan user groups should be consulted as stakeholders to evaluate the social resources (i.e. Passive Recreational Opportunities) lost as a result of all hardline developments and passive recreational resource mitigation should be evaluated and planned.

While this list in not all inclusive, the following projects have commonly known recreational use: Meadowood, Cielo del Norte, Merriam Mountains, Paradigm, and Warner Ranch.

## APPENDIX F – MITIGATION ANALYSIS

The mitigation analysis needs to include supporting measures for achieving the social goals of the plan. It currently does not. It needs to be linked to the county trails program goals as well.

## APPENDIX G FRAMEWORK RESOOURCE MANAGEMENT PLAN

GENERAL NOTE: The Framework Resource Management Plan (Appendix G) of the North County MSCP is still under development, specifically the Plan-Wide Stewardship Guidelines (2.2). This is a critical section and without its inclusion in the public review process it is impossible for the public to adequately comment on the plan. The comment period required by CDFG section 2800 requires a 60 day public review process. This plan is only being allocated a 45 day review process. The comment period should be extended until 60 days after this section is completed and made available to the public via current forum.

ALL Core Areas need to have a "Quality of Life Goals" section immediately following the Conservation Goals section.

G.1 Paragraph 3 (page 1) should read "Existing and planned" verses existing. Additionally, as shown by previous land acquisitions by public entities, those entities are often not fully aware of the historical usage of those lands. Passive recreational and otherwise responsible land usages are often not accounted for as "existing". In keeping with the social goals of this plan user groups should be consulted as stakeholders to evaluate the existing social resources within and adjacent to preserves.

G.1 Paragraph 4 (page 1) The second and last sentence should read"….conservation of biological, cultural, and passive recreational resources and that direct and indirect impacts to sensitive habitats, covered species, and cultural resources are reduced through activity restrictions, project design and adaptive management practices.

G.1 Table 1 (page 2) Public Access/Recreation (for stewardship and adaptive management) should be added to both listings.

G.1.4. Interim Management.
This is absolutely unacceptable. New uses will not begin until a baseline biological and management needs surveys have been conducted and this plan allows for five years for the completion of those surveys. Considering that public funds are often used for the acquisition of these lands the public desires results sooner than that. Combined with Section 2.1 of the FRMP this would lock the public out of new preserves for up to five years. Considering that nearly all areas considered for new acquisitions have some level of recreational use, this is devastating.

G.2.1 Baseline Inventory of Management Needs.
The concept of locking out the public out of preserves for up to five years while a baseline inventory is unsatisfactory. The policy is blatantly anti-access. The baseline inventory needs to accurately account for existing conditions at the time of the preserve acquisition. Passive recreational use is often a normal pattern of use, impact and disruption. If a scientifically accurate baseline inventory takes up to five years to accomplish then the existing passive recreational usages must be maintained throughout the baseline inventory process, otherwise the baseline inventory will be flawed.

G.2.2 Siting Criteria (Still Under Development)

This is a critical section and without its inclusion in the public review process it is impossible for the public to adequately comment on the plan. The comment period should be extended until 60 days after this section is completed and made available to the public via current forum.

Sentence one: The word “appropriate” should be replace with “Passive” since passive has already been defined as appropriate.

G.2.4 (page 6) Recreation and Public Access.

The stewardship benefits of partnering with responsible passive recreational users can not be understated. The story of the Bearclaw-Poppy trail in the Green Valley trail system in St. George Utah is an excellent example of how passive recreational trails users partnered with the land management agencies to provide habitat restoration for the endangered Bearclaw-Poppy plant and simultaneous provide a positive outdoor experience. (Bearclaw-Poppy, 2009) The BLM partnered with the Fish and Wildlife Service, IMBA and local mountain bikers to develop a plan that led to the creation of a sustainable trail system, rehabilitated cryptobiotic soils, a thriving environment for the Bearclaw-Poppy and a high level of public stewardship. Today the Bearclaw-Poppy Trail is the most popular trail in town, providing 12 miles of breathtaking desert mountain biking experiences for riders of all skills and ages.

G.2.4.Paragraph 4 Sentence one should read “…biological, cultural, and quality of life resources.” Sentence two should read “Existing and future recreational facilities…”
NOTE: I take recreational facilities to include trails.

G.2.6. Erosion Control

Sustainable trail design is both erosion control and habitat restoration. The rerouting of an erosion prone section of trail should be included as a way to mitigate these problems. A modern trail science approach should be used in the North County MSCP. Trail standards such as those used by the US Forest Service, US Department of Agriculture, and the International Mountain Biking Association provide the means to achieve increased habitat restoration while supporting the social goals of this program.

G.3 .1 Habitat Restoration

The modern trail design and maintenance science used by the San Diego Mountain Biking Association produces a net habitat benefit. Every preserve in San Diego County has been touched by the hand of man. Most often this is seen by access or jeep roads that are often steep and erosion prone. In the past these roads have been designated as trails. Often they are not only blights on the landscape and huge erosion problems, but they are also maintenance intensive and typically provide little in the way of a quality outdoor experience for passive recreation. SDMBA advocates the construction of modern trails while simultaneously decommissioning and rehabilitating problematic sections.

The Rancho La Costa Preserve that is to become part of this plan is a good example of this methodology. Over the last three years, the San Diego Mountain Biking Association and the Center for Natural Land Management have teamed together to transform this area from a patchwork of environmentally insensitive old roads and trails into a modern and sustainable trail system that is environmentally conscious while providing a high quality outdoor experience. New modern trails and sustainable reroutes were coupled with the simultaneous decommissioning and rehabilitation of the old environmentally unsound roads and trails. Thousands of volunteer hours have gone into this effort to date with roughly half of the hours used towards direct habitat restoration such as planting of native flora. The public stewardship towards habitat restoration provided by passive recreationalist at Rancho La Costa could be achieved throughout the North County MSCP under the right partnering conditions.

G.3.1(page 14) Develop a restoration monitoring program.

Add to end: Monitor trails for maintenance and sustainability issues. Actively pursue reroutes that can eliminate problematic areas. Local trail advocacy groups are excellent resources for volunteer partnership with this effort.

G.7 BIOLOGICAL AND CULTURAL RESOURCE MONITORING.

GENERAL COMMENT : This section should be re-titled to include "BIOLOGICAL, CULTURAL, AND Quality of Life (QOL) RESOURCE MONITORING" to better reflect all of the goals of the plan. This section also needs a program for monitoring the QOL, particularly Passive Recreation as it supports the Social Goals of this program.

Add a section 7.6 QOL Monitoring Methods

G.8 Planning Segments (Still Under Development)
This is a critical section and without its inclusion in the public review process it is impossible for the public to adequately comment on the plan. The comment period should be extended until 60 days after this section is completed and made available to the public via current forum.

Each Core Area, Special Area, and Linkage should have a Quality of Life Goals Section included after the conservation goals. These goals should be considered supporting elements to the plans overall Quality of Life and Social Goals. Without these focused support goals in each areas there will be no focus on the plans overall quality of life and social goals.

REFERNCES:

San Diego County Community Master Trails Plan, Chapter 7, Design and Construction Guidelines

Bearclaw-Poppy Trail Success Story, International Mountain Biking Association, http://www.imba.com/resources/successes/bearclaw.html

April 5, 2009
Friends of Hedionda Creek
1900 Esplendido Ave
Vista, CA 92084

Jared Underwood
Department of Planning and Land Use
5201 Ruffin Rd., Suite B
San Diego, CA 92123-1666

Dear Mr. Underwood,

We appreciate the opportunity to comment on the North County Multiple Species Conservation Plan, (NCMSCP) and look forward to its implementation. We know Staff has worked hard to balance the requirements of good scientific practice against the desires of political forces. We strongly believe resource preservation and land use planning should not set short term goals of ten to thirty years but must forecast far into the future; several hundred years from where we are today. We must consider how we will undo the damage of the last eighty years of land use decisions, which have contributed to the problems we have today. The years of bountiful land with bountiful resources are gone. We now must figure out how we will all become good stewards of the land and protect its few remaining natural resources.

Although the NCMSCP is not the ideal plan, it's a good beginning. Long term, we should commit to making land use planning decisions that strive to rebuild degraded habitat areas, reconnect broken linkages, and work to change the mindset of the public so that they understand, appreciate, and support preservation of natural resources. We believe we are at a pivotal moment and with so few resources left there is no room for error. It is imperative that the NCMSCP is a good science based plan that will ensure a positive outcome. Anything less is unacceptable.

Upon review we would like to point out a few areas of the proposed plan that need modification. Overall, while the intention is good, we feel this document lacks detail required to show firm commitment to preservation. There are too many soft words and phases like, *where practicable* without clarification on what or who makes that determination. In addition, in cases where the determination is not clearly defined and a County staff person makes the determination, we are concerned that politics, not science, will end up being the deciding factor. We know Staff has the best interest of the public in mind but the reality is there is too much pressure on Staff from development interests through political mechanisms to ensure all decisions are made to support the survivability of this habitat plan. The NCMSCP document must be specific so that Staff doesn't have to make the call on what is practicable—the document does. We believe this is the only way to guarantee survivability of the plan.

After looking at the preserve design, we are very concerned the preserve design appears to be a "spaghetti preserve" with a few large blocks of land connected by thin tenuous strands of linkages. Since it is impossible to control wildlife movement to keep them inside the safety zone of the preserve system, public education and support will be a critical part of this habitat plan.

Several items were missing from the documents made available to the public. Comments submitted to the previous preliminary draft NCMSCP should have been included. It would have allowed the public to see how past comments were addressed. Also, since the County has already gone through the South County MSCP (SCMSCP), it would have been helpful for the public to know how the two plans compare, see the differences, and understand how this plan will be superior to the South County plan. The County obviously has learned a lot through the South County plan execution so the NCMSCP should benefit from this knowledge. Finally, although Volume I was available for public review, it reference Volume II, which was not available for public review on the County's website. It would have been helpful to see this document.

## COMMENTS PER PAGE

**P22, 3.2.5, Key Agricultural Areas, states**,*" Key agricultural areas are important as those that provide habitat for the arroyo toad, Stephens' kangaroo rat, and other species."* Additional statements on page 23 and 24 make it clear that the success of the PAMA is dependent upon agricultural lands to buffer core habitat and provide connectivity between preserve areas. However, there are different types of agricultural operations. Open agricultural land is often converted to greenhouse operations completely removing the land's ability to either support wildlife or wildlife movement. In addition, some agricultural operations are using chain link fence around the perimeter of their property. Chain link fencing prevents movement through an area for all but the smallest animals. What mechanisms are in place to ensure the agricultural lands, important for the success of the NCMSCP, will remain open land and remain passable for wildlife?

**Page 32, 4.4.2, County Trails Program** states, *"Passive recreational activities (e.g., hiking, bird watching, horse riding, bicycling) are anticipated within preserves and are normally compatible with Plan conservation goals."* Trails are a wonderful amenity for people and they help build appreciation for natural resources. Unfortunately, they can also cause problems. People, dogs, and horses can unintentionally introduce seeds from nonnative plants, which can degrade the biological value of the preserve. One only has to walk along local trails or unimproved dirt roads to find such exotics as Castor Bean, Pampas grass, black mustard, and tree tobacco following a trail or road line. In addition, not all trail users follow good practice by either leaving their dogs at home or keeping them on a leash while hiking. Dogs can leave communicable contagions. Canine distemper virus, which is transmitted through contact with urine or fecal material left by infected domestic dogs, can cause increased mortality rates in native animals.

On page 5 of Appendix C, Independent Science Advisory Review, 7. Protect reserve from encroachment, it states, *"Blocks of habitat that are roadless or otherwise inaccessible to human disturbance serve to better conserve target species than do accessible habitat blocks."* In paragraph c. it talks about how trails are problematic for some species. What species are most impacted by trails? What education and enforcement mechanisms have been built into the plan to minimize negative impacts? In critical habitat areas, shouldn't trails either be removed or not built?

**Page 26, 4.1 Overview**
It appears from this section that 42,830 lands of the 136,835 of natural lands or 31% will be impacted. That means 69% will be preserved. This is too low. Through the MHCP process the target percentage of preservation with in the Biological Core and Linkage area is 75%. The County should have a plan with at least the same levels of preservation as the proposed seven cities MHCP. What was the percent target for preservation in the South County MSCP? What findings have been made to demonstrate that a 69% preservation rate for a preserve design with long thin linkages, will be successful?

**Page 26-4.2 Hardline Development Projects**
After reviewing this section and the details in Appendix E. it appears not much attention was give to Appendix C-INDEPENDENT SCIENCE ADVISOR'S REVIEW. Not only is the amount preserved in the hardline areas too low but also it appears some of the hardline preserves are really sweetheart deals for the developers of those projects.

Most of the Hardline preserves, created by specific projects (Appendix E, pages 5,11,16,19,23,26), appear to be fragmented by either a road or other development. The projects that illustrate this problem are, Pappas/Pasarelle/Meadowood, Merriam Mountain, Montecito Ranch, Lilac Ranch, and Cielo del Norte. In these projects, elements of the hardline preserve are in conflict with recommendations shown in Appendix C, Independent Science Advisor's Review, page 5 of the Independent Science Advisor's Review, under item 7. Protect reserves from encroachment, clearly talks about the negative impacts of roads through the preserved lands as well as problems associated with edge effects from developments. Please explain how having roads and fragmenting the biological open space of the preserve is consistent with biological preservation goals and provide evidence to support this position in context of the above hardlined preserves.

Since some of the developers of these projects stand to benefit greatly from the density increases they have been given, we don't understand why so many of the hardline preserves are so fragmented. As an example we will use the Merriam Mountains project. The site is 2,327 acres and the project preserve consists of 51% of the onsite natural habitat in the hardline preserve. A two-lane public road runs through the heart of the hardline preserve area from north to south along the backbone of the mountain and the project. In addition, the open space will have over 18 miles of trails.

Under the existing General Plan the yield for the site would be approximately 345 dwelling units (du). Now the Merriam project is proposed as a 2700 du. SPA. Therefore, to preserve 51% of the site, the County is considering awarding the developer almost 8 times the number of dwelling units allowed under the County's current General Plan. In

addition, the County is willing to accept a public road through the heart of the open space and significant amounts of edge effects and impacts from miles of trails. The road through the preserve is particularly problematic. If a secondary access is needed for fire requirements, then the project should be rethought so that either a road is not needed or secondary access can be placed in another location and kept out of the preserve.

**Page 33, 4.5.2 Residential Brushing and Clearing**
The additional 3 acres allowed for a total of 5 acres of brush clearing, creating 9,000 additional acres of cleared native habitat outside the PAMA seems excessive and does not appear to be justified. Is this an attempt to make the MSCP match section J (1) of the County's Grading and Clearing Ordinance (9329)? If so, this blanket approach to fuel management and it will have significant consequences that should be studied. Steep slope areas are of particular concern.

Native habitat once cleared, especially by grubbing or scarifying which is a popular practice in North County, becomes infested with non-native weedy plants that are often as fire prone as native habitat. Once cleared, landowners must then commit to twice a year clearing or use herbicides to keep down non-native weedy plants. Although hand trimming or line trimmers are recommended, once you get over an acre of brush clearing around a home, many people rent a tractor and end up grubbing or scarifying the area. (See image: example of clearing) To allow an additional three acres of clearing is likely to increase this practice since it is too laborious or too expensive for the average homeowner to hand clear more than a couple of acres.

Grubbing or scarifying produces undesirable long-term consequences. This process usually results in erosion since few homeowners can replant additional acres of cleared native vegetation with vegetation that will not burn or not need irrigation. In areas where the topsoil is thin, repeated scarifying combined with erosion, removes topsoil making the site only habitable for opportunistic weedy plants. In addition, in light of current and future drought conditions, any irrigation systems needed to start replanted slopes, rob water from other public needs. Thinning of native habitat is a more responsible solution because it preserves the root system, which helps reduce erosion. But thinning needs to be used in combination with public education and strong enforcement. Building wisely, using fire resistant-low water intensive landscape, and clearing based upon distance from the structure and not a specified amount of acres, is better solution than a blanket solution of clearing five acres.

**4.5.3 Residential Brushing and Clearing**
The comment made above for 4.5.2 applies to this section but the statement regarding HabiTrack is of concern since it appears to only address clearing of habitat through the permitting system. There is a lot of clearing done illegally in San Diego County and we don't see how illegally cleared lands will be entered into the HabiTrack system. How will the County account for illegal or excessive clearing both inside and outside the PAMA? Why will the County be using taxpayer money for mitigation of clearing by residents who choose to build in a flammable wildland environment? New building permits should include a fee to cover any clearing mitigation costs. After a public

education campaign, aerial surveys should be used and property owners should be notified regarding clearing practices of their particular parcel.

**P42, Private contributions**
Isn't donation and dedication the same thing? Please describe how they are different.

**P42, Ordinance Implementation**
In the first paragraph it states, *"According to the most recent amendment to the County's RPO, when areas identified as steep slopes are subject to development only minimal encroachment is allowed on the steep slopes and the remainder must be set aside in an open space easement."* However, on at least one of the hardline preserves, the Merriam Mountains, a 2005 document shows the project proponent asking the County and Wildlife agencies to *"address the County RPO in a way that allows the All South Plan to proceed as proposed…"*. It also states, *" County Staff will support findings that impacts to RPO jurisdictional features resulting from the All South Plan are necessary to enhance the overall conservation values of the Project and to provide superior ecological benefits."*

The RPO was amended in 2007. How does the current RPO protects natural resources better than the version of the ordinance referenced by Merriam Mountains in 2005? How does the Merriam Mountains project comply or not comply with the current RPO? What exemptions to the RPO are expected to occur in the future?

**Pg 54 5.4 Acquisition Process**
Under the criteria of land to be considered a high priority for conservation and candidate for public acquisition we would change the following

• *lands that comprise essential linkages across the Plan area, <u>connect to adjacent (MHCP) areas</u> or that are located in important corridors for the movement of species intended to be covered by the Plan;*
Also we would like added

• *lands with native habitat that have been identified as important for watershed protection*.
This should include lands that have been identified in watershed management plans as important preservation targets. They often include headwaters of watersheds. As an example, see the Carlsbad Watershed Management Plan and the Agua Hedionda Creek Management Plan.

Also we would like added

. • *lands that provide connectivity with either the MHCP approved sub area plans or with areas identified in the MHCP as Focus Planning Areas.*

We believe it is important that the County's plan can link with the MHCP plan.

**Page 55**
It is unclear why habitats containing high densities of the California gnatcatcher are shown as priority 2. Why would this area be considered a priority 2? Please supply data and details to support this designation.

We agree that the San Marcos Mountains are a category 1. However, reference to importance to connectivity to the focus planning areas for the MHCP should be referenced. Portions of the San Marcos Mountains located in the PAMA serve to connect the MHCP with the NCMSCP. In fact, the County should try to include orphaned TET properties in the San Marcos Mountains if the adjacent jurisdictions fail to take them, or cover them in their MHCP subarea plans.

**Page 58&59 6.2 Vegetation Communities Conserved**
Overall the conservation amounts appear to be too low. If I am reading table 6-1 correctly, it appears we are only conserving 67% of our wetlands habitats. How does this comply with "no net loss"? All wetland vegetation communities should be covered at 100%. San Diego County has lost too much of its wetlands and riparian communities. As of the last count, we only have 3%-4% of this habitat left and creation of wetlands has proved to be difficult. If we only have a small amount left, we should preserve it all. Also, quantities of Coastal Sage Scrub, shown at 63% should be at 75% to match what is targeted in the MHCP. The County should at least match MHCP requirements conservation ratios.

In addition, we are concerned that there are fewer then the 294,840 acres left that support natural habitat. Unless this calculation was done in the past year, the count may be even lower. Property owners, over concerns of fire and MSCP restriction have been clearing within the PAMA areas. What mechanisms are in place to prevent wholesale sandbagging of the plan by property owners prior to implementation or enforcement?

**Page 60-64**
Why was the public not given Volume II, Conservation Analysis EIS/EIR? It would be helpful to have all the documents to review. Can the County be in compliance with CEQA without making Volume II available for review?

We are very concerned at the rates of some of the species listed in the table. Species that are dependant upon wetlands habitats such as the Brodiaea filifolia are shown at only 28%! In addition, the amounts for many of the birds, such as the burrowing owl at 38% are astonishing! Please clarify what the NCMSCP will preserve and why the figures in the "Conservation Estimate for all Predicted Habitat" so low.

**Page 66, 7.Development Policies and Regulations**
Paragraph one states, "*Wetland habitat is subject to the no net loss policy and will therefore be conserved through avoidance or off-site mitigation if avoidance is infeasible."* We believe all off site mitigation should occur in the same watershed so that the watershed as a whole maintains a no net loss in function and value.

**Page 66, 7.1 Project Mitigation**
In this section it states,
*" 2. If avoidance is not possible, then:*
*a. Minimize impacts by limiting the degree or magnitude of an action.*
*b. Rectify the impact by repairing, rehabilitating, or restoring the impacted environment.*
*c. Reduce or eliminate impacts over time by preservation and maintenance during the life of an action.*
*d. Compensate for impacts by replacing or providing substitute resources or environments."*

What is the criteria that determines if avoidance isn't possible? We are bringing this up because often project proponents will say their project goals can't be met without impacts. It's not that a project can't be built on the site and avoid the impacts, but that the project proponent wants a more intensive use and therefore can't avoid the impacts. What mechanism is in place to prevent the continued "We can't avoid the impacts and meet our project goals"?

**page 69, Section 7.3.-Wetlands Conservation** states, *"The Plan will achieve no net loss of wetland habitats through the avoidance, minimization, and mitigation measures."* Because wetlands are a critical part of watershed protection this statement should also state that no net loss will occur within the watershed and any mitigation will be done within the same watershed. Repeated mitigation outside the watershed eventually degrades the watershed below the point of meeting its designated function under the Water Quality Act and is against the sprit of the "no net loss" policy.

Mitigation through wetlands recreation can be problematic. There is no guarantee it will work. (see attachment: forum_mitigation_hugggett.pdf) According to Duncan Huggett in his paper to ***Designing & Building Dynamic Coasts and Wetlands***, "Effective implementation of no net loss requires replacement habitats to be created in advance of the losses and shown to be an integral and functioning part of the site which will sustain a loss before the loss occurs. A major problem is that this requires the creation of replacement habitats normally many years in advance of losses. Therefore, no net loss must be a proactive policy rather than one designed to only react to proposals resulting in habitat loss."

**Page 69, Resource Protection Ordinance**
We are concerned about the statement, "The RPO generally requires wetlands to be avoided, except under specific circumstances." This statement is too vague. What does it mean? What specific circumstances would allow development in wetlands? What is the track record or data that shows restoration and enhancement are successful? What if restoration isn't successful? What happens then?

**Page 72, Wetland Buffers**
In this section it states, *".. Buffer widths will not be allowed to be below 50-feet…"* How is this measurement taken? How is the edge of the wetland defined? We are concerned because we have seen at least one project where the builder terraced the pads up to the

creek, requiring 50 + feet of fill adjacent to the wetland. The measurement the developer used included the linear measurement down the face of the slope and not 50 feet horizontally from the head or the toe of the slope to the wetland. The result is there is no room for wildlife to pass between the creek and the slope. If the slope is steep, there is little chance wildlife can pass.

**Page 83, 7.4.3**
In this section it states, "Covered animal species (Table 6-2) must be avoided the maximum extent practicable within the PAMA." Once again, here is the word practicable. According to the Merriam Webster Dictionary it means usable or capable of being done or accomplished, (possible). What determines practicable? Can financial profit determine what is practicable? Who decides what is practicable? Please provide examples to clarify this point.

**Page 84, Agricultural Policies,**
As previously stated, although we agree that agricultural lands can serve as habitat, corridors, or buffer zones, there are different types of agricultural operations. Open agricultural land is often converted to greenhouse operations completely removing the land's ability to either support wildlife or allow wildlife movement. What mechanisms are in place to ensure agricultural lands that are important for the success of the NCMSCP will remain open land? What incentives are given farmers? Table 7-6, Changing agricultural land uses- groves to shade houses doesn't seem to adequately address wildlife linkages.

**Page 89, 7.5.6 Fire Prevention and Safety**
Please see previous comments on this matter. It is better build an incombustible structure in a combustible area then build a combustible structure and denude the area around it. During the past fires, high winds carried burning embers miles, igniting structures. In fact, one home in Poway burned to the ground and it had 300-feet of perimeter clearing from the dwelling. Clearly, expansive clearing isn't the best solution.

**Page 92, 7.6 Wildlife Crossings of Roadways**
Wildlife crossing structures should be used where wildlife corridors exist, not just where significant regional wildlife corridors exist. Since wildlife will travel outside the PAMA into other areas, adequate crossings outside the PAMA are critical unless the County has found some method of controlling the movements of wildlife. In addition, the way this section is worded it is too open to interpretation to what is considered significant. In addition, we disagree with the statement, "…stream crossings should be designed to encourage wildlife movement where appropriate". What is appropriate? If it is expensive or someone decides they don't like the way the crossing looks will it be considered not appropriate? Who determines what is appropriate? This should be changed to, *"Undercrossings using drainage facilities or stream crossings will be designed to ensure wildlife movement-see attached drawings and specifications".*

Also we would like a statement added *" If multiple species need different undercrossing requirements, then the undercrossing design will be in a manner that meets the needs of the different species that are in the area and are expected to use the undercrossing."*

Finally, we would like language to make clear that drainage systems are not considered undercrossings unless they can provide enough unsubmerged area to allow wildlife to use them. This can be accomplished by channeling the sides of the drainage area lower and keeping the center raised so that animals can pass. In addition, cumulative impacts based upon expected runoff to the area should be incorporated into the undercrossing design. You may want to add that the drainage type undercrossing would need to be passable (less then ¼" deep) within 5 days of a storm event. We are requesting this language because we have seen at least one drainage type wildlife crossing become unusable for wildlife due to increased upstream runoff. What is sad is that the runoff was actually generated by the same project that triggered the need for the wildlife crossing.

**Page 92, Procedures.**
Under item 1. it states, *"Determine whether the project will affect land within the PAMA or the viability of the reserve network. If so, proceed to the next step. If not, wildlife crossings may be necessary as roadway safety measures, but are not required by this Plan."*
How will this be measured—by the number of deer strikes and accidents? As stated above, wildlife undercrossings should not be limited to the PAMA.

Section 5 is particularly problematic. It states, *"Design the project incorporating these structures into roadway designs, but only to the extent that they can be reasonably incorporated based on engineering constraints."*

We are at a point in our civilization where almost anything can be built. You have a spaghetti design preserve system with only thin, tenuous connections. Without adequate wildlife movement through these areas many wildlife will decline and populations will fail. Movement is critical and successful undercrossings are a non-negotiable item. Before approval of this plan the County should have engineering solutions for undercrossings at every point where linkage could become a problem without an undercrossing. This should be done for the plan area and any linkages to the adjacent MHCP focus planning areas. This is the only way to ensure you will have feasible undercrossings through the preserve.

**Page 111, 8.3.3, Annual Public Reporting,**
Under project review it says that once the Implementing Agreement is signed, the County will no longer need to consult the Wildlife Agencies. What is a significant concern is that unless the County has adequate and well-trained staff, it won't be able to ensure the execution of the plan. To give an example, the County currently has many codes but the lack of staff in Code Enforcement has resulted in a case backlog. What mechanisms are in place to ensure the County will commit the resources to adequately implement the plan?

## Comments to Figures

**COMMENT: figure 2.1.**
Not all the areas set aside appear to be connected to other habitat areas within the MSCP. In addition, since the MHCP focus planning areas are not shown, several areas appear fragmented. For instance, the area shown between San Marcos and Buena Creek is bisected by the San Diego Water Authority 135-foot wide Right-of-Way. Although it appears separated from other habitat areas shown in the plan, it actually connects to lands within the focus planning area for the MHCP. The Right-of-Way extends south to Mission Road in San Marcos and north across Buena Creek Road. This right-of-way could act as a connection to other preserved areas to the north. Since the right-of-way is restricted from development an attempt should be made to use it as a corridor connection to other identified PAMA lands in the north. (see doc for comment to figure2.1)

**COMMENT to figure 5.2**
Figure 5.2 shows an anticipated project in the San Marcos Mountains, just north west of Owen's peak and south of Buena Creek Road. Although there was a project planed for this area, the project died in 2006 when the San Marcos City Council voted not to extend the tentative map. (see doc for comment 5.2 A&B) Since there is no approved project for this site, the anticipated project designation should be removed. If it is not removed, please provide evidence to support the anticipated project designation.

One thing we didn't see addressed in this plan in detail, but is critical to the NCMSCP success, is public education. The public must understand its roll in making the NCMSCP a success. Through education all San Diegans will learn to understand, respect, and appreciate the wondrous beauty of San Diego County's wildlands.
(see: Interpretive Panels panel 25gooddog, panel02livinglandscape, panel05exotics)

Thank you very much for this opportunity to comment on the Preliminary Public Review Draft for the North county Multiple Species Conservation Program. Please contact us at 760-727-0311 if you have any questions or require additional documentation.

Sincerely,

Sandra Farrell

*From the Ramsar Forum*

# Developing a No Net Loss Approach in the United Kingdom

**(additional contribution to the Ramsar Forum discussion on "No Net Loss", 12-15 May 1998)**

**Paper presented to the *Designing & Building Dynamic Coasts and Wetlands* seminar, organised by Dr Bob Earll, London, January 1998.**

## Designing and Building Dynamic Coasts and Wetlands: Developing a No Net Loss Approach

**Duncan Huggett**

**Royal Society for the Protection of Birds, The Lodge, Sandy, Bedfordshire, SG19 2DL**

### Summary

A basic definition of the no net loss concept is given by the US Wetlands Action Plan: wetland losses must be offset by wetland gains. The Habitats Directive aims to establish a network of protected sites in order to maintain or restore the favourable conservation status of listed habitats and species. Within these sites, we must take steps to avoid the deterioration of natural habitats and the habitats of species. However, many protected sites include dynamic coastal and wetland habitats, which under natural circumstance are subject to sometimes large changes in the nature, quality and extent of habitat, often over short timescales. This paper explores what needs to be considered if a no net loss policy is to be implemented.

### Introduction

The UK coastline is of international, indeed global importance for its wildlife. This is reflected in the number of designated sites on the coast. For example, of the 256 wildlife areas in the UK which should qualify for classification as Special Protection Area under the Birds Directive, 130 are coastal and 58 of these are estuaries (Pritchard *et al* 1992). In addition, more than 40 estuarine areas are likely to be included in Special Areas of Conservation to be designated under the Habitats Directive.

The Habitats Directive aims to establish a network of protected sites in order to maintain or restore the favourable conservation status of listed habitats and species (see Annex I and II of the Habitats Directive respectively). Within these sites, we *must* take steps to avoid the deterioration of natural habitats and the habitats of species. However, many protected sites include dynamic coastal and wetland habitats, which under natural circumstance are subject to sometimes large changes in the nature, quality and extent of habitat, often over short timescales.

In response to this issue, initially with respect to coastal flood defences, sea level rise and the need to work with coastal change wherever possible, the RSPB began to look at the concept of no net loss (Huggett 1996a).

This identified a number of issues, which needed to be addressed before a policy of no net loss should be considered for the UK. However, since this review, no one has taken up the challenge and begun to address the issues identified. Therefore, it is of considerable concern that the concept of no net loss appears to have entered the vocabulary of conservationists. Perhaps this is because it provides a convenient way out of the difficulties encountered in implementing the Habitats Directive in dynamic systems.

Some of the key issues which must be considered further include:

- What do we mean by no net loss?
- To what should a policy of no net loss apply?
- When is no net loss acceptable?
- What constitutes acceptable habitat replacement?
- How do you achieve no net loss rather than net loss followed by net gain?
- Is habitat creation a realistic proposition?
- How do you know when no net loss has been achieved?
- Where do we go from here?

These questions are considered briefly in this paper. However, if we desire to implement a policy of no net loss for dynamic coasts and wetlands, then these questions must be addressed

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**What is no net loss?**

A basic definition of no net loss is given by the US Wetlands Action Plan: *wetland losses must be offset by wetland gains* (US Fish & Wildlife Service 1990). However, most definitions are more refined, referring to some measure of wetland extent or quality particularly in terms of wetland functions and values (e.g. Conservation Foundation 1988). Some also identify the criteria by which the no net loss policy is triggered (e.g. habitat loss must be unavoidable, Fisheries and Oceans Canada, 1986). However, the basic premise remains - to take something away, you must put it back.

A significant problem with this approach is that it suggests all wetlands are 'up for grabs' (O'Donnel 1988, Lynch-Stewart 1992). In other words, no net loss by itself implies the continued loss of habitat. One way of getting around this problem might be to prioritise wetlands and the management policies which apply (e.g. Moller 1995). For example, the Ontario Government has developed the concept of no loss of provincially significant wetlands and no net loss of other wetlands. However, the fact remains that some wetlands would be seen as expendable. To address this, no net loss policies have been

developed whose objectives go further than just to maintain the status quo. For example:

- the National Wetlands Policy Forum, USA, national wetlands goal was to achieve no overall net loss of the nations remaining wetland base, as defined by area and function, and to restore and create wetlands, where feasible, to increase the quantity and quality of the nation's resource base (Conservation Foundation 1988)

- the European Commission's principles for the implementing a no net loss policy (Commission for the European Community 1995):

  - no further loss of wetlands except for reasons of overriding public interest
  - no further wetland degradation
  - wise use of wetlands
  - improvement and restoration of wetlands

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**To what should a no net loss policy apply?**

Successful implementation of a no net loss policy requires the identification of habitats to which the policy applies, how much habitat there is and its quality. Without this, it will be impossible to assess whether the no net loss policy is being successfully implemented. In effect, the habitats to which the policy applies need to be delineated. However, there are a number of risks involved in going down the delineation route and large sums of money and a great deal of time can be spent for little conservation gain.

First, the definitions of habitat must be consistent and their delineation must be based on scientific, not political criteria. If coastal wetlands are delineated using political criteria, changes in policy will change the yardstick against which no net loss implementation is measured. For example, in the USA it was estimated that changes to the definition removed approximately 10% of the US resource from protective measures (San Francisco Chronicle, no date but circa 1992).

Second, even when consistent definitions are developed, problems can remain due to the difficulty in applying them on the ground. To address this, the US Army Corps of Engineers have developed wetland indicators (US ACE, undated). However, any system of defining habitats must be easy to apply in the real world, out in the field and by non-experts. There is absolutely no point in developing a set of criteria for the identification of different habitats if the criteria can only be used by experts and if a number of the indicators used are often missing or difficult to identify.

Finally, a full assessment of habitat resources requires an analysis of a range of variables including habitat function and characterisation according to type, stress, condition, value and importance. This is essential in order to ensure that any new habitats are more than just cosmetic replacements but they provide as near as possible, the same functions and values that are lost. In the past, perhaps less so now, there has been much confusion about habitat wetland function and values. Yet defining these as part of a no net loss policy is essential.

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## When is no net loss acceptable?

Having defined a no net loss policy and the habitats to which it applies, one needs to decide when habitat loss, balanced by gains elsewhere, is acceptable. In general, no net loss policies from elsewhere in the world start from the basic premise of no further loss - habitat loss should not be condoned unless it is the last resort when all attempts to avoid damage or loss have failed. The difficulty for decision makers is in deciding when this point has been reached.

The USA Federal Clean Water Act Section 404 Guidelines defines unavoidable as: *where a project is not water dependent then the developer must demonstrate that there are no alternative sites, that the project is in the public interest and that all means to mitigate the damage have been taken.*

These criteria are similar to those outlined within the Habitats Directive relating to SPAs and SACs. Any project not directly related to the management of an SPA/SAC and likely to have a significant effect must be subject to an appropriate assessment. A damaging project should only proceed if there are no alternatives, it is imperative for reasons of overriding public interest and all compensatory measures necessary have been taken. Attempts to define acceptable loss criteria currently raise more questions than they answer. However, there are useful examples of how such concepts might be built into decision making procedures (e.g. US Fish & Wildlife Service draft principles for implementing a no net loss policy, 1990).

In general, these examples adopt a dynamic approach to the decision making process which begins with the ideal and moves through a sequence of less and less preferred options when the ideal cannot be implemented. The process of sequencing applies to a number of facets and defining the sequence of preferred options is critical. The sequence should begin with avoiding impacts entirely. If this is not possible then impacts should be minimised by reducing the magnitude of actions, rectifying adverse impacts, reducing or eliminating impacts over time or compensating for adverse impacts by replacing lost habitats. The sequence of planning solutions should range from project relocation, through to alteration of project plans with careful design and implementation, and the reduction of on-site and off-site impacts.

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## What constitutes acceptable habitat replacement?

Whether it is part of the mitigation process or as part of a compensation package, a significant problem arises when alternative habitats are being considered in order to achieve no net loss. How do we decide when a replacement habitat on offer constitutes an equivalent habitat to that being lost? Like the dynamic decision-making process above, decisions concerning habitat equivalence involves a dynamic process.

At one end of the scale is replacement habitat which is exactly like the habitat being lost—the same in area, function and value, and as close as possible to the impact site. At the other end of the scale is replacement habitat which is of a different type to that being lost - it is smaller in area and doesn't replicate the function or value of the impact site. There is an inverse relationship between equivalence of the wetland and compensation—the more unlike the replacement wetland is, the greater the justification for compensation. Superimposed on this relationship must be the degree of risk that the replacement habitat will fail to provide the expected functions and values. The greater the risk, the greater the amount of compensation required as 'insurance' (see figure 1).

Having decided what type of habitat replacement is appropriate under the particular circumstances, one must then decide how best to deliver it. Mitigation and compensation procedures from elsewhere in the world, and particularly the USA indicate that there is a hierarchy of preferred approaches (for example, see Fish & Wildlife Service 1981, Fisheries & Oceans Canada 1986, Illinois Interagency Wetland Policy Act 1989, Maryland Non-tidal Wetlands Protection Act 1989). This sequence is based on the contribution the approach makes to maintaining the overall stock of habitat and the probability of success.

First, there is habitat restoration—restoring the functions and values to an area which once was the same habitat as that being lost. This means that the overall area of the habitat is maintained, or even increased and because a number of the physical attributes of the old habitat may still remain (such as soil chemistry), the likelihood of success is good. If habitat restoration is not a realistic option, then the next best thing is habitat creation. This means the overall area of habitat is maintained or increased. However, because many of the habitat attributes may be absent and will have to be recreated as well, the chances of success are less certain.

Third, if creation is not possible, then habitat enhancement should be considered. This does not result in the maintenance of the overall habitat stock. However, by enhancing the value of existing habitats of the same type, the overall value of the habitat in a region can be maintained or increased. Finally, if none of these options are possible, then preservation of the remaining habitat stock should be the last resort. The overall area and value of the habitat resource will have declined but at least what remains will be protected in the long term. In effect, this means removing the remaining areas of that habitat from the policy of no net loss.

It is possible to link habitat restoration/creation criteria to the type, importance and level of impact of the habitat involved as well as to habitat function (e.g. in Alaska, category A wetlands require no net loss of functional values within the catchment, category B wetlands require no net loss of functional values within the community). However, many agree that in the short term, surrogate measures such as area will have to continue to be used due to the absence of more definitive measures. This of course raises questions of what area ratio of new habitat to lost habitat is acceptable. This is likely to be dependent on the functional value of the impact site, the value of the replacement wetlands and the likely success of the replacement proposals.

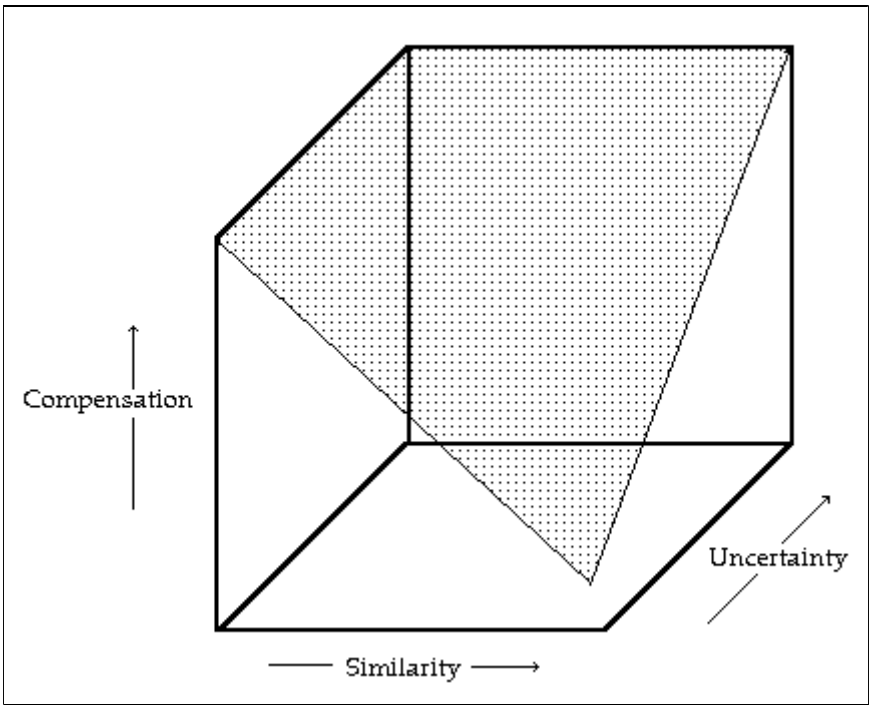


**Figure 1 - the relationship between the degree of compensation, similarity of replacement habitat with lost habitat and the level of uncertainty**

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### How do you achieve no net loss rather than loss followed by gain?

Effective implementation of no net loss requires replacement habitats to created in advance of the losses and shown to be an integral and functioning part of the site which will sustain a loss before the loss occurs. A major problem is that this requires the creation of replacement habitats normally many years in advance of losses. Therefore, no net loss must be a proactive policy rather than one designed to only react to proposals resulting in habitat loss.

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### Mitigation or Land banking

In the USA, large scale habitat creation is used to offset piecemeal habitat losses in the future. This is known as mitigation or land banking. The developer does not have to restore or create habitats themselves, rather purchase 'credits' from another 'developer' who has restored or created habitats for this purpose. A detailed study of mitigation land banking in action in the USA concluded that*, as part of the sequenced decision making process*, it can provide ecologically sound and viable compensatory mitigation (Environmental Law Institute 1993). It can help to ensure that mitigation is more ecologically significant because it can:

- ensure that habitat is created and proved successful well in advance of habitat losses;
- facilitate larger scale one-off habitat creation which may provide for

buffer zones which can increase the resilience of a site and ensure success;

- deliver economies of scale - reducing the number of EAs needed, the number of contract tenders etc.;
- be designed to specifically address regional or national biodiversity targets for habitat creation.

However, the study also concluded that successful mitigation land banking required a regulatory framework which should be legally enforceable. This should include:

- production of national guidance providing clear standards for mitigation banking although such guidance should not establish a precedence for banking over on-site mitigation;
- development of standards for successful habitat restoration/creation;
- the production of habitat conservation plans which established specific goals for habitat restoration/creation; and
- support for pilot projects.

Mitigation land banking requires an agency with overall responsibility for establishing and operating a mitigation land bank, up-front financing, guaranteed return on investment for the developer possibly some years after the bank is established and a requirement that mitigative action is still carried out on site (Grenell 1993). In addition, firm and consistent regulation of developments proposing habitat loss must be a precondition and close attention is required to the terms and conditions of both on-site mitigation and mitigation banking. Due to the time scales over which habitat functions evolve, often the full functional performance of the bank will not have been established prior to their use in mitigation. Therefore it is essential that financial assurances exist to ensure successful completion of the bank. The signing of contracts or the deposit of money is not considered sufficient.

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**Is habitat creation a realistic proposition?**

It is generally agreed that no habitat can be duplicated exactly. In addition, it is accepted that the protection of existing habitats is the cheapest and most effective way of conserving wildlife and must always take precedence over other means (e.g. Wildlife Ministers' Council of Canada 1990, Commission of the European Communities 1995). However, provided with quality information about the characteristics of the original habitat, careful design and sufficient attention to monitoring and maintenance, many aspects of a wide range of habitats may be restored or created to provide many of the same functions as the original habitat (Conservation Foundation 1988). Indeed, much of the disagreement over success revolves around its definition (Stephens 1991). If success is defined in terms of a relatively small number of measurable objectives, then it becomes a more realistic proposition.

Many of the problems with delivery of a no net loss policy identified by practitioners stem from the lack of scientific certainty and predictability of habitat restoration and more particularly habitat creation. Some of the reasons why it is so difficult to create new habitats and in particular wetlands include (after

Zedler 1988):

- wetlands are highly complex and develop as part of a larger, still evolving landscape;
- there are no blue-prints, we can see the end product but not the long-term processes;
- wetlands include mobile and responsive species;
- the inter specific and between habitat relationships and dependencies are incompletely understood;
- wetlands are highly dynamic, they accrete and erode, flood and dry out (raising the question of Limits of Acceptable Change);
- the required combination of functions to establish habitat persistence and resilience are not known; and
- regional wetland requirements must be accounted for but the linkages and corridors required are poorly understood.

It can be concluded that habitat creation can contribute to the overall goal of no net loss. However, many technical problems exist which affect the success of creation projects, making habitat creation a tool of limited application at this time. The scientific uncertainty surrounding habitat restoration and creation is a major impediment to the development of a no net loss policy (Conservation Foundation 1988, US Fish & Wildlife Service 1990). However, if the concept of a no net loss goal is considered valid, then current inability to achieve this is not necessarily a legitimate reason to dismiss the goal. Instead, it should force us to define what we do and don't know about protecting and restoring habitats and to develop programmes to address the shortfall in information (Lynch-Stewart 1992).

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**How do you know when no net loss has been achieved?**

The scale at which no net loss is measured will affect the interpretation of successful implementation. This is reflected in Canadian policy where the standard of no overall net loss does not require compliance on a case by case basis (Lynch-Stewart 1992). It is the nation's overall wetland resource which needs to reach an equilibrium between losses and gains in the short term, and to increase in the long term. In other words, it is accepted that losses cannot be stopped completely. However, it is clear that successful implementation of a no net loss policy requires a significant reduction in the rate of wetland loss and an increased rate of wetland restoration and creation.

Scale is also important in another aspect. Under the Habitats Directive it can always be argued that an alternative exists to a damaging proposal (Huggett 1996b). The fact that the less damaging proposal may cost many millions of pounds more is something which arguably is not a matter for consideration under the Directive. However, this could lead to ridiculous situations where the cost of less damaging schemes not only is prohibitive in terms of the economic benefit gained but is also excessive in terms of the nature conservation benefit. A combination of a more damaging scheme and habitat replacement *could* achieve greater conservation gain in the long term.

If the no net loss policy is to work and alternatives issue under the Habitats Directive tackled effectively, the geographic scale on which alternatives are considered may need to be increased. In the USA, a regional approach to habitat management allows the area of search for replacement habitats to be broadened and potentially the interpretation of what constitutes an alternative to be relaxed.

However, irrespective of the scale at which success is measured, success criteria still need to be developed. These should be defined in terms of habitat function and values in their widest sense (e.g. ecological, sociological etc. values). However, experience of translating general objectives relating to function and value into measurable targets, perhaps in terms of bird numbers or habitat area is still largely undeveloped in the UK. For example, whilst numbers and species of birds using new habitats can be easily compared to old habitats, the tolerances and how natural variation can/should be accounted for is still in its infancy.

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**The Future - where do we go from here?**

It can be concluded from this brief paper that the development of a no net loss policy for habitats in the UK will not be easy. However, practitioners of existing no net loss policies have identified a number of key points which would assist in the potentially successful development and implementation of no net loss policy. Central to this is the development of a coherent delivery framework. Key elements of this framework should be:

- the establishment of a national goal and clear regional goals to guide all habitat protection and management;
- full and effective implementation of existing legislation;
- modification of habitat regulation where gaps exist to provide more effective protection;
- develop new strategies and tools (especially spatial development strategies) which involve a multi-disciplinary approach to meet the goals;
- improve Government lead by reducing habitat loss from Government action, increasing the rate of purchase of the most important habitats, improving the management of habitats in public ownership and restore habitats on public land;
- increase incentives for wise management and protection of habitats in private ownership;
- improve the quantity and quality of knowledge, especially basic research on habitat functions, values, habitat creation and restoration;
- increase efforts devoted to habitat restoration and creation;
- ensure adequate money and other resources to implement national habitat programmes;

- develop full monitoring programmes; and
- development of public awareness programmes.

No net loss must be delivered through advanced planning rather than on a case by case basis. Area wide multi-functional plans need to be developed which involve a process which engage all agencies in the setting of multi-functional objectives. These plans should have strong links with existing multi-agency integrated management plans already in existence. Specific objectives should be to:

- define habitats and delineation criteria;
- guide development to the most appropriate locations;
- identify priorities for acquisition;
- identify threshold levels which trigger no net loss implementation.
- outline the sequence of required mitigation procedures
- prescribe specific compensation/mitigation options suitable for a range of habitat types;
- prioritise research programmes, monitoring and maintenance requirements;

Whilst these measures will not on their own necessarily provide a full and effective framework for the implementation of a no net loss policy, these should be considered as the basis upon which further deliberations and debate should be established. It is hoped that this debate can now begin.

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**Additional Material: Definitions and Examples**

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To join the Ramsar Forum, send this message: <join ramsar-forum>, without the < >, to ramsar-mgr@indaba.iucn.org. For more information on the Ramsar Convention on Wetlands, please contact the **Ramsar Convention Bureau**, Rue Mauverney 28, CH-1196 Gland, Switzerland (tel +41 22 999 0170, fax +41 22 999 0169, e-mail ramsar@hq.iucn.org). Posted 18 May 1998, Dwight Peck, Ramsar.

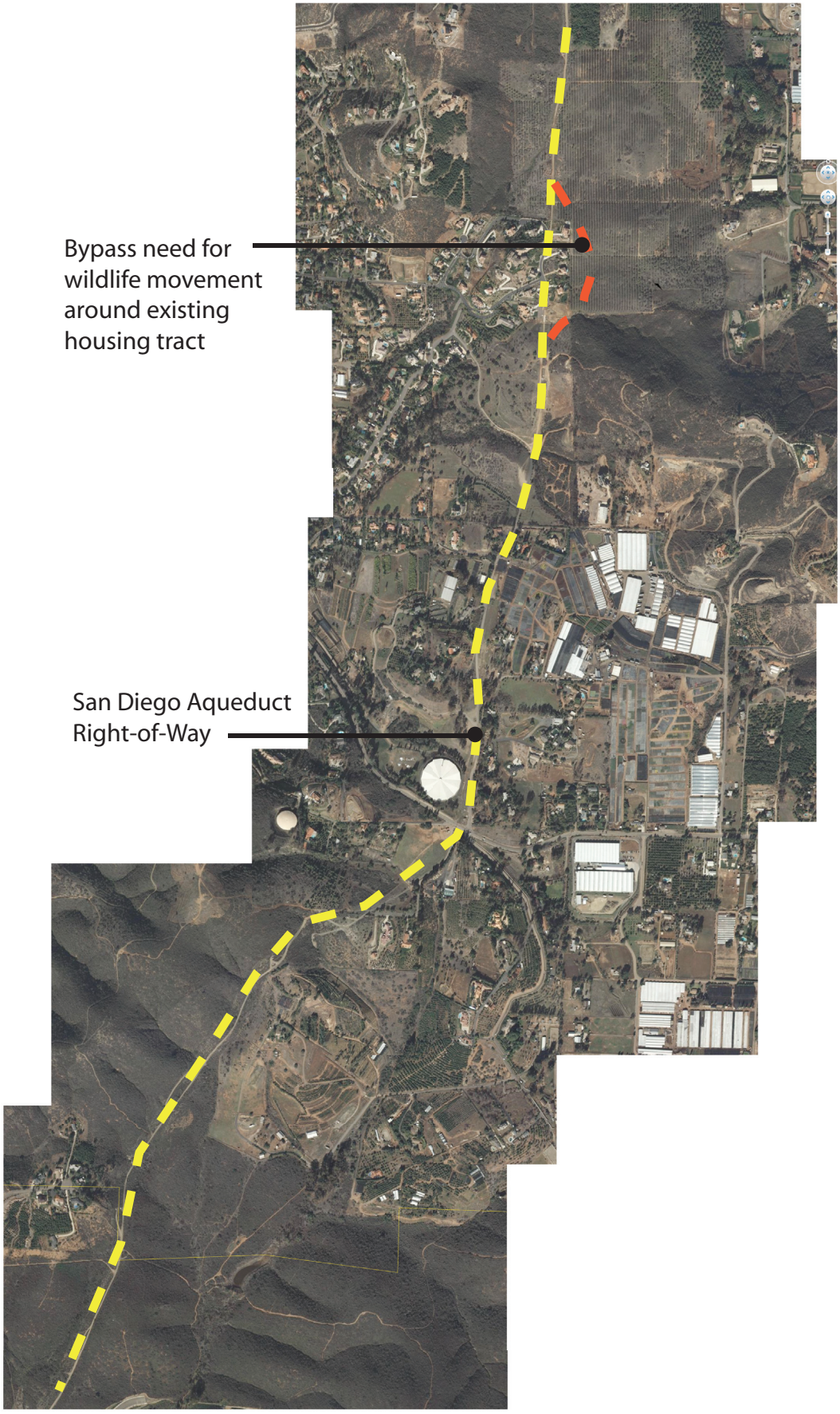



Illustration to Support Comment to Figure 2.1

San Diego
Regional Water Quality
Control Board

# Executive Officer's Report

February 8, 2006

# TABLE OF CONTENTS

## PART A



## PART B



## PART C



**Attachments** for B-1, B-2, B-10, B-12, B-13 and C-1 are included at the end of the report. Also included as an attachment are the Significant NPDES Permits, WDRs and RB Actions.

9. Water Quality Problems at Lake San Marcos, San Diego County *(Eric Becker)*
As reported in the August 2005 Executive Officer Report, residents in the community of Lake San Marcos continue to be concerned about the deteriorating water quality conditions in the lake. One of their concerns has been with sediment discharges from a new development overlooking the lake. After an initial lack of adequate construction erosion control BMPs in early 2005, the developer of California Cove Varadero has been implementing an effective combination of sediment and erosion control BMPs to reduce the discharges of sediment as verified by Northern Watershed Protection Unit (NWPU) and County of San Diego staff during the 2005-06 rainy season. However, NWPU staff has noted erosion in the natural channel downstream of the development that has resulted in sediment discharges into the lake.

Requirements to prevent downstream erosion for new development are prescribed in the San Diego municipal storm water permit Order No. R9-2001-001. The Varadero project, however, was approved prior to the effective date of the requirements and as a consequence complies with the criteria established by the County of San Diego under its previous MS4 permit.

The NWPU staff is working with the County of San Diego and California Cove Varadero to address sediment discharges. The developer has upgraded the site's construction storm water BMPs, constructed a berm to divert flow from the recreational area, removed some of the sediment that discharged into Lake San Marcos, and reanalyzed post construction discharges rates from the development.

10. San Marcos Highlands Project Update *(Christopher Means)(Attachment B-10)*
On December 14, 2005, after considerable public comment, the San Diego Regional Board approved a Section 401 water quality certification for the San Marcos Highlands residential project. The proposed project consisted of 190 single-family homes on a 200-acre parcel bisected by the headwaters of Agua Hedionda Creek. Prior to the Regional Board action, the City of San Marcos Planning Commission had granted the developer, KB Home, a second one-year extension on the tentative subdivision map for the project to allow them to secure the necessary environmental permits. Members of the public appealed this decision to the City Council.

On January 24, 2005, however, the San Marcos City Council decided 3-2 to deny the extension of the tentative map for the project (see attachment B-10) and thus denies approval of the project. If KB Home should want to pursue the project further, they would need to restart the lengthy approval process (including the environmental assessment process). Any future proposed project that differed from the original project would require a new 401 certification from the Regional Board.

11. Escondido Creek Watershed –Reidy Creek *(Eric Becker)*
During the public forum on December 14, 2005, residents expressed concerns about the water quality impacts in the Escondido Creek watershed, in particular Reidy Canyon

| Section/Page/ Paragraph | Comment | |
|---|---|---|
| | been approved. Please delete San Marcos Highlands from the table since it did not receive LAFCO approval and the City of San Marcos has not renewed the development agreements. | H-65 |
| 3.8.2/47/Tbl 3-5 | Please update the Table to reflect that Oak Country Estates has been purchased for open space. Rancho Esquilago and Topmark Communities are listed in this table as potential future projects – please clarify given that they are also listed in section 3.8.1 | H-66 |
| 4.1/52/3 | The boundary line process is further described in section 5.7.2 – perhaps all that is needed here is the reference to that section – otherwise, these paragraphs need to be revised to be consistent with section 5.7.2. | H-67 |
| 4.1/52. | Edits have been suggested for narrow endemics (see mark-up). | H-68 |
| 4.1/53. | Edits have been suggested for the BLA process (see mark-up). | H-69 |
| 4.2/53 | Development Review and Approval Process. The draft Plan must make it an explicit policy that in the PAMA, land suitable for the preserve, outside the permitted developable area shall be conveyed to the preserve through an appropriate mechanism (e.g., conservation easement, fee title, IOD, etc.). These lands can be used to meet mitigation and adjustments requirements for the proposed project; however, they cannot be used to mitigate future projects. This policy should be incorporated into the BMO as a permit requirement. Edits have been suggested (See mark-up). | H-70 |
| 4.1/54. | Edits have been suggested for the North County BMO and criteria for linkages (see mark-up). | H-71 |
| 4.3.1/54/Tbl 4-1 | Revise mitigation ratios based on previous comments and add ratios (assumes mitigation would occur in PAMA). | H-72 |
| 4.3.1/54/3 | Who determines economic viability of a project? | H-73 |
| 4.3.1/54/bullets | Add a bullet for vernal pools in areas outside PAMA to be preserved. | H-74 |
| 4.4.1/57/4 | Clarify purpose of wetland buffers, minimum widths, etc. | H-75 |
| 4.4.2/58 | Vernal Pools. "Maximum extent practicable" needs to be defined – the BMO should include specific language to address how this is determined. | H-76 |
| 4.4.2/58/1 | Clarify that the 100-foot buffer should be from the edge of the watershed – impact to the watershed would be considered a direct impact to the affected basin. Replace the word "creating" with "restoring". | H-77 |
| 4.4.2/59/Tbl 4-3 | Add common name for each species to the table. | H-78 |
| 4.4.2/60/2 | This paragraph describes "exceptions" to the avoidance criteria described in the first paragraph of this section. It is borrowed from the City of San Diego's draft wetlands deviation ordinance – if exceptions are to be considered, the rest of the policy should be included, as well, which requires a "biologically superior" alternative to be provided in order to consider impacts to lower quality pools. Increased mitigation ratios and better reserve design are two examples of "biologically superior" mitigation. This option would have to be included in the BMO as well, and would require approval by the Wildlife Agencies. | H-79 |
| 4.4.2/61 | Edits have been suggested to the vernal pool section (see mark-up). | H-80 |

# "BUT I'M A GOOD DOG!"

Unfortunately, even good dogs can cause problems in our parks and on our beaches. They can harass wildlife, disturb sensitive nesting and breeding areas, and spread diseases to other animals.

Dogs, especially those not on a leash, can intimidate other visitors. They can also be injured in fights with other animals or by falls off cliffs or down steep hillsides.

To prevent these problems and more fully enjoy the park with your dog, remember that dogs are permitted in campgrounds, picnic areas, and parking lots if they are kept on a leash and under control at all times.

Some parks allow dogs on specified trails—check with park staff for more information.

Dogs may not be left unattended at any time, and it is illegal to allow them to chase or harass wildlife.

Working service dogs assisting persons with disabilities may enter any area of the park where visitors are allowed.

## Please remember to clean up after your pet.

## THEN

Wildlife roamed freely, restrained only by natural features.

## NOW

Habitat is broken into small parcels, separated by roads, homes, farms and industry.

## FUTURE

Natural areas are linked by corridors that allow wildlife to move between them more easily and freely.

# A Living Landscape

Biodiversity is the variety of life—all the different plants, animals and microscopic organisms, and the larger natural communities of which they are a part. Preserving this interconnected web of life is vital to the health of our parks.

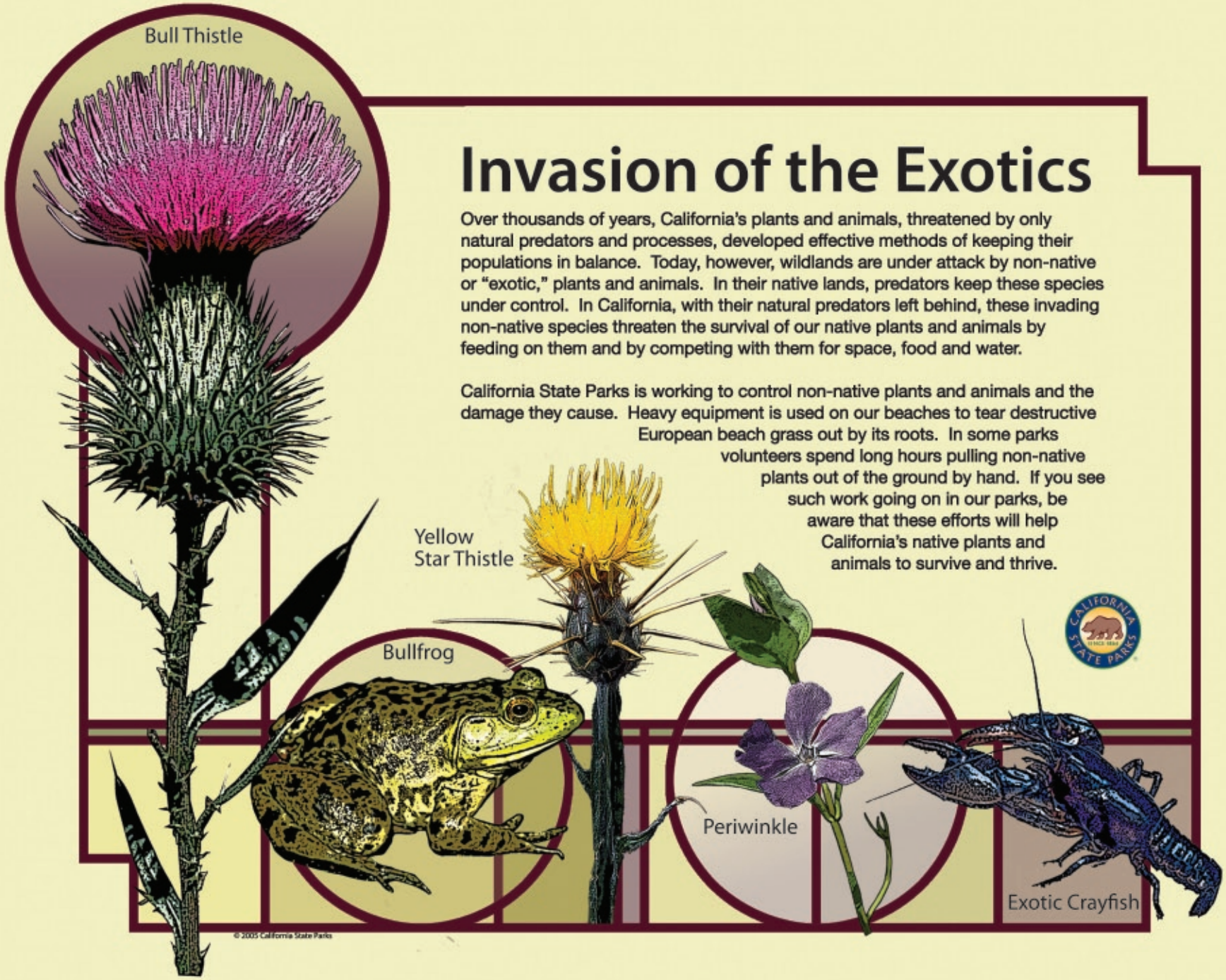
Most state parks are not large enough to ensure the long-term survival of all the life they now support. Ongoing research shows that if natural areas are separated from other reserves of land, as many state parks are, up to half of their plant and animal species may perish over time. Most biologists believe that, next to habitat destruction, this fragmentation is the greatest threat to our natural biodiversity.

California State Parks is working to reconnect parklands to other protected natural areas. As key parcels of land are acquired to serve as linkages, isolated "islands" of open space are joined to create larger, healthier natural areas.

# Invasion of the Exotics

Over thousands of years, California's plants and animals, threatened by only natural predators and processes, developed effective methods of keeping their populations in balance. Today, however, wildlands are under attack by non-native or "exotic," plants and animals. In their native lands, predators keep these species under control. In California, with their natural predators left behind, these invading non-native species threaten the survival of our native plants and animals by feeding on them and by competing with them for space, food and water.

California State Parks is working to control non-native plants and animals and the damage they cause. Heavy equipment is used on our beaches to tear destructive European beach grass out by its roots. In some parks volunteers spend long hours pulling non-native plants out of the ground by hand. If you see such work going on in our parks, be aware that these efforts will help California's native plants and animals to survive and thrive.



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1 April 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666
mscp@sdcounty.ca.gov

**RE: North County MSCP Draft Plan**

**To Whom It May Concern:**

The Conservation Biology Institute (CBI) is a non-profit, science support organization, with expertise in habitat conservation planning, environmental impact studies, and special status species conservation and recovery efforts. CBI staff have been leaders in the state's Natural Community Conservation Planning (NCCP) program since its inception. I served as project manager for both the San Diego Multiple Species Conservation Program (MSCP) and the Multiple Habitats Conservation Program (MHCP). I and other CBI staff have provided peer review and scientific input on multiple NCCP programs across the state. We have prepared comments on the referenced document on behalf of the Endangered Habitats League.

**Conservation/Acquisition Priorities pp. 54-55**
Why are some of these areas considered greater priority than others, when each supports different biological resources thought to be important to ecoregional planning? Please see additional comments under my review of Appendix G. Acquisition is only one conservation tool, and different conservation tools may be needed for different resources in different planning segments.

**Preserve Analysis pp. 58ff**
Given the existing level of fragmentation in North County, Table 6-1 showing the percentage of conservation for each vegetation community is almost meaningless. Rather, the analysis should focus on configuration of conservation areas and how many areas within the PAMA will actually

support patches of habitat that are large enough to support viable populations of covered species. How many of these areas would still "count" as conserved if an edge effect analysis were performed, e.g., assuming that a minimum of up to 100m of habitat adjacent to development will suffer from edge effects? This type of analysis was performed for the MHCP in an area similarly fragmented by existing development.

In previous regional conservation planning efforts in San Diego County, we have learned that all covered species must be managed and monitored, even though we do not have the capability or the funding to manage for and monitor every species. How were management and monitoring considerations integrated into the species conservation analyses?

**Vernal Pool Policy p. 72**
The following sentences:

*Conservation of vernal pools must avoid impacts to vernal pool watersheds. A minimum planar buffer of 100 feet from the vernal pool watershed to development shall be incorporated to minimize adverse changes to vernal pool hydrology.*

should be revised as follows:

*All development must avoid impacts to vernal pool watersheds. Development projects must be sited a minimum planar distance of 100 feet from the vernal pool watershed and must be engineered so as not to drain into the watershed.*

**Narrow Endemic Policy pp. 79ff**
Narrow endemic species are rare because one or more elements of their habitat requirements are rare or only locally distributed. Therefore, there should be a "no net loss" policy of narrow endemic species or their habitats. How can we mitigate for impacts to a species if its specific habitat type (vegetation community, soil, cliffs, host plant, pollinators, etc.) is no longer available in the plan area? For example, what is the extent of gabbro soils in the plan area, and is there a conservation goal for this habitat type? Because these species are already limited in distribution, how will any losses affect the gene pool? Why are policies restricted to within the PAMA for some endemics but not for all? At what population level or what size geographic area or what unique location should the 20% impact allowance be withdrawn and no take allowed so as not to affect the viability of the species? As a reference, it appears that populations of cactus wrens, burrowing owls, and pond turtles, as well as suitable nest sites for golden eagles and sufficient grasslands for other raptors, within the Southern San Diego MSCP area may already be below levels sufficient to sustain the species within the plan area.

**Agricultural Lands Outside the PAMA pp. 84ff**
Because agricultural land is the largest vegetation community in the plan area, and because several species proposed to be covered under the plan use agricultural communities as habitat (e.g., burrowing owl, golden eagle, white-tailed kite, grasshopper sparrow, northern harrier, pallid bat, Townsend's big-eared bat, Stephens' kangaroo rat), impacts to agricultural land must be mitigated at a Tier 3 level.

**Wildlife Crossings of Roadways pp.92ff**

Because the PAMA is fragmented, wildlife crossings will be important throughout the plan area. Roadkill surveys, in addition to other focused studies, are an easy and cost-efficient way to determine where additional crossing structures are needed, or where existing corridors need to be maintained. Wide-ranging animals that live in the reserve and are covered by the MSCP also travel outside the reserve, and thus their movement must be accommodated, especially given the fragmented nature of the preserve network in North County. Small mammals serve as prey for wildlife covered by this ecosystem plan and thus should also be accommodated by crossing structures and fencing. Special attention should be given to roadways within the planning segments identified in Appendix G.

**Appendix G Framework Resource Management Plan**

Existing preserve areas. Please define which land uses are compatible with existing conserved lands and who is responsible for their stewardship. What is the schedule for conducting baseline surveys and ASMDs for these lands?

Interim management. Please describe who will manage mitigation lands in the interim before the land is dedicated to the preserve and how it will be managed.

Compliance monitoring. Who is accountable for ensuring compliance with development project commitments, i.e., avoidance and minimization of impacts, easements and open space, specifications of wildlife crossings, landscaping restrictions, development runoff, stewardship, etc.? To my knowledge, there is no tracking system for this in South County, but the North County plan states that there will be a GIS database to track biological and cultural management activities. Will there also be a database to track development compliance? This section needs greater elaboration.

Law enforcement. This is a critical issue that has not been adequately addressed in the South County preserves, and the biological resources are suffering as a result. How will the County address this issue for the North County MSCP?

Management. How will County staff be allocated for management of North County and South County MSCP? Will additional staff be hired? Who will coordinate management of the preserve network in North and South County?

Planning Segments. This section is an excellent start for addressing the original biological core and linkage map developed by the County along with the consultants and Independent Science Advisors. This section should be the heart of the plan, with a matrix of acres by vegetation community by segment so that the reader can better understand the distribution of resources across the plan area and their relative importance. Ideally, there would be a chapter for each segment which describes:

- What specific conservation actions will be taken to ensure that conservation goals are met, e.g., functional corridors between existing preserves, buffers to existing preserves, minimal fragmentation in core areas, etc.?
- What specific threats are known for specific resources in each segment, and how will they be addressed through preserve design, acquisition, land use regulation of

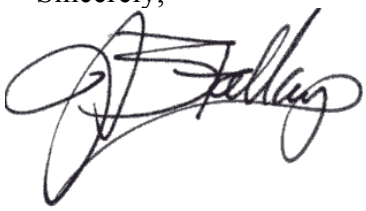
development, management for specific resources in each segment, and regulation of recreational uses allowed?

- Which conservation actions will be implemented (and how), and which are only recommendations? In which segments are working landscapes essential to fulfilling the conservation goals, in which segments is acquisition likely to be needed because of the number and location of small parcels, etc.?
- How will hard-lined projects within each of the segments affect the ability to achieve the specific conservation goals for each segment? If future (non-hard-lined) development is anticipated in the segment, where is the best location to minimize fragmentation? Avoiding fragmentation through avoidance by and consolidation of development projects should be the principal goal for each core area.
- Which core and linkage areas, together with existing public lands, support cross-elevational gradients that are important to facilitate shifts in vegetation communities and species distributions as a result of climate change? Conservation of these areas, without additional fragmentation, should be prioritized.
- Which core and linkage areas support intact hydrological processes, and what conservation is needed to ensure that these processes remain intact?
- What is the function of each core and linkage area in the context of the regional network of preserves, including San Diego, Orange, and Riverside counties? For example, the coastal sage scrub in the Elfin Forest core must be conserved to sustain California gnatcatcher populations and other coastal sage scrub species in the South County MSCP and MHCP, as well as the North County MSCP. What additional conservation actions outside the plan area would be necessary to support the viability of resources within the North County MSCP?
- Why do some directives require "minimizing impacts" or "maintaining connectivity" while others require "conservation" or "protection?" Are these meant to imply degrees of protection or degrees of impacts allowed? These directives require elaboration on the specific methods and locations where actions will be taken.
- Which of these segments support proposed covered species in such major or critical populations that without conservation of the segment the species could not be considered covered? What percentage of the species' populations within the plan area does each segment support?
- How will the 25% allowable development be calculated? 25% of each core area and linkage? Or could 25% of the PAMA be developed in a single location? What percent of the PAMA will be developed as a result of hard-lined projects? Are there some segments where 100% should be conserved and other segments where >25% could be developed?
- What are logical management units for the North County plan area? Presumably some of these units will extend outside the plan area. In these cases, which management partners should be engaged?

- In the South County MSCP subarea plan, linkages are defined as *an area of habitat that not only provides connectivity between core areas but also provides breeding and foraging habitat for resident species. Corridors are narrower connections that allow for movement and dispersal only.* It would be helpful if the North County plan also differentiated between habitat linkages and local movement corridors.
- Which roadways and linkages within each planning segment need modifications to facilitate wildlife movement and where?

Thank you for your attention to these comments.

Sincerely,



Jerre Ann Stallcup
Conservation Biologist

March 24, 2009

Jared Underwood
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5201 Ruffin Rd., Suite B
San Diego, CA 92123-1666

**RE: Draft North County MSCP**

Dear Jared:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on the draft plan and to continue to work with you on its success. Such success is vital for the future of San Diego County.

**3.2.2 Data (p 20)**

Arroyo Toad (AST) Habitat Evaluation

The model used for the arroyo toad is flawed. As previously explained in earlier comments, toads will forage far beyond 80 feet in elevation from the streambed, as long as the gradient or terrain is passable.

**4.1 Overview (p 26)**

As shown in Table 4.1, overall mitigation for impacts is approximately 1:1. This is not commensurate with the baseline depletion of habitats. At a minimum, it indicates the need for explicit goals and objectives linked to findings, so that the reserve is properly assembled.

**4.2 Hardline Development Projects (p. 27)**

The following provision is problematic and should be eliminated or revised as suggested:

> If the final approved project converts Take Authorized areas into open space that contributes to the overall preserve system, these areas can then be used to decrease the need for off-site mitigation, if appropriate ~~or mitigate other projects~~.

Negotiations with the wildlife agencies cannot supercede the County's land use authority to require open space dedications as conditions of approval. The County must be able to require more open space as part of the land use process. Mitigation banking should not be allowed on land that is avoided through the land use process.

EHL also has concerns with many individual proposed hard lines. For example, the low amount of land set aside and poor quality, fragmented reserve design for Lilac Ranch are unacceptable. And Warner Ranch (GPA 06-009) is unacceptable for inclusion in the North County MSCP under *any* circumstance.

The Warner Ranch project is a proposed general plan amendment that is contrary to the goals and policies not only of the current General Plan, but also to all draft land use maps of the General Plan Update. It is thus premature for hard line consideration. From a planning standpoint, moreover, it is leapfrog sprawl into a rural location characterized by infrastructure deficiency, lack of water, and high fire hazard. Furthermore, a necessary part of the project is the widening of SR 76 from 2 to 4 lanes between the site and the I-15. Such widening is inconsistent with the draft Circulation Element, *and will not be a covered project under MSCP-North*. This reason alone mandates exclusion as a hard line project. Such widening would also be enormously growth-inducing.

**4.5.2 Fire Clearing (p 33)**

It is stated that the clearing of 13,000 acres of habitat for fire clearance on individual home sites *within* PAMA will not "inhibit" preserve assembly. What does "inhibit" mean, and what is the analytical basis for this conclusion? What "County contributions" will mitigate these impacts, what is the biological basis for that conclusion, and what is the legal basis for the proposal? On a policy basis, why is the public underwriting mitigation for the impacts of private, luxury estates?

> . . . the clearing could result in the impact of up to 19,000 acres (13,000 acres within PAMA and 6,000 acres outside) of natural habitats within the Plan area. This is the maximum clearing that could occur associated new with single family dwellings not built as part of a subdivision or other development project. Impacts to natural vegetation have been calculated for the Plan area and will be mitigated for with County contributions to the preserve assembly. It is not expected that this or the additional clearing exemption discussed in section 4.5.3 will inhibit preserve assembly.

**4.5.3 Residential Brushing and Clearing (p 34)**

As repeatedly pointed out, there is no public safety rationale for allowing 5 acres of clearing on parcels if only 2 acres is the maximum anticipated for fire clearing. Why does not DPLU address this on a policy level? Also, why is the public mitigating for the impacts of private, luxury estates?

> Impacts to natural vegetation have been calculated for the Plan area and will be mitigated for with County contributions to the preserve assembly.

**5.1 Preserve Assembly and Financing (p 37)**

Figure 5-1 Estimated Preserve Assembly Contributions

Does "mitigation" mean mitigation *and* dedications?

Private Contributions (p. 42)

This section is poorly written, co-mingling donations, dedications through the land use process as conditions of approval, and mitigation.

> In total, 42,716 acres are expected to come from future private donations and dedications. Of these, development mitigation is expected to contribute the most to the preserve.

Ordinance Implementation, County RPO Open Space Easements (p. 42)

Concur with using this assembly mechanism, which is consistent with current easement dedication practice.

> Within the PAMA, such open space easements will be allowed to mitigate for onsite projects impacts, however any remainder of steep slopes on the parcel would not be available for off-site or other project mitigation . . . The lands set aside through ordinance implementation will be managed in accordance with the FRMP (Appendix G) as part of the North County preserve system.

**5.2.3 Stewardship (p. 44)**

Private landowner stewardship responsibility should include lands dedicated through the entitlement process as well as mitigation lands.

**5.4 Acquisition Process (p. 55)**

The prioritization into categories 1 and 2 does not make sense. For example, it is impossible to understand why gnatcatcher occupied coastal sage scrub is not a top priority.

**5.4.2 Permanent Resource Protection (p. 56)**

Concur with this approach, which is essential for preserve assembly and thus permitting by the wildlife agencies. However, it needs to be carried through to the BMO so that implementation occurs.

> • Lands set aside in order to make preserve design findings in the BMO will be permanently protected with biological conservation easements, perpetual open space easements equivalent to conservation easements or, dedications in fee to the County or other government agency or nonprofit entity with a stated conservation mission.

**6.2 Vegetation Communities Conserved (p. 59)**

Table 6-1. Conservation Summary by Vegetation Community

62% overall coastal sage scrub conservation is inadequate and low in relation to other NCCP/HCPs. Given the projected losses of high value coastal sage scrub within the hard line projects, how will 79% of coastal sage scrub within PAMA be protected? What percent of gnatcatcher occupied coastal sage scrub will be protected?

**6.3 Species Conserved (p. 61)**

Table 6-2. Species Conservation Summary

Striking is the poor conservation rates for reptiles and amphibians and birds.

**7.2 Project Design Criteria (p. 67)**

Preserve Design Criteria

In accordance with Section 5.4.2 (Permanent Resource Protection), this section should note that lands avoided to make preserve design findings will also be conserved in perpetuity.

> Lands conserved to mitigate project impacts <u>or to make preserve design findings</u> will be conserved in perpetuity through a conservation easement or other similar method (BMO §86.518).

**7.2.1 Habitat Based Mitigation (p. 68)**

Table 7-1. Mitigation Ratios for Unavoidable Impacts to Habitat

As described below in comments on the draft BMO, these ratios are far too low, and constitute a "sweetheart" deal for development interests.

In-kind mitigation (p. 69)

Coastal sage scrub is severely depleted in the plan area and now under even greater stress due to repetitive fire and type conversion. It is also more susceptible to development due to gentler slopes. Unless all possible tools are brought to bear, the reserve will be successfully assembled for this key habitat. Thus, coastal sage scrub should be added to the list of habitats mitigated in kind.

**7.3.3 Downtown Ramona Vernal Pools (p. 76)**

The 20-30 acre mitigation bank site is critical to the success of the downtown

program, and should be identified prior to program adoption, preferably on the school district site.

**7.4.1 Narrow Endemic Policy (p. 80)**

Table 7-4. Species Subject to the Narrow Endemic Policy

The arroyo toad has very specialized and restricted habitat for breeding. It should be classified as a narrow endemic, as it is in the South County MSCP.

**7.5.3 Agricultural Lands Outside the PAMA (p. 85-6)**

For the covered species noted below, biological and preserve assembly justification should be added that substantiates the ability to lose occupied habitat without any mitigation occurring.

> If suitable habitat is present for any of the following species, clearing must take place when impacts can be minimized as specified in the BMO (§86.519): Coastal cactus wren, Burrowing owl, California gnatcatcher, Least Bell's vireo, Southwestern willow flycatcher, and Arroyo toad.
>
> The following change is necessary:
>
> If a landowner converting their natural habitat to agricultural operations outside the PAMA does not wish to place an agricultural conservation easement, they ~~may~~ shall mitigate for the loss of habitat according to the BMO.

Table 7-6. Agricultural Best Management Practices (p. 87)

Specific Activities within Suitable Upland Habitat for Arroyo Toad (p. 87)

Best scientific information is a 1.5 km distance from stream segments rather than 1 km. What experts has the County consulted with for the 1 km number, and where is the documentation?

**7.5.6 Fire Prevention and Safety (p. 89)**

The proposed exemption of "2 acres" should be eliminated, and substituted with an amount of clearing corresponding to 100 feet around structures and 30 feet around roads as specified in fire ordinances. *At a minimum*, the exemption should be "*up to* 2 acres." Otherwise, BMP allowances for fuel management could be exceeded.

Also, the term "clearing" should be eliminated. "Fuel management" should be substituted, and defined according to Calif. Dept. of Forestry and Fire Protection defensible space guidance (previously provided). This guidance calls for zones of clearing and thinning within 100 feet of structures. There is no fire safety rational for 2

acres of complete clearing, and indeed, such excess is counterproductive. It would foster type-conversion to highly flammable weeds, eliminate the useful barrier to wind-borne embers and the heat sink offered by thinned vegetation, and cause soil erosion. Outside PAMA, the *same* allowance – the 2-acre cap – should similarly apply, as there is no safety justification for any greater amount of fuel management.

The following changes are thus recommended:

• Within the PAMA, up to two acres of ~~clearing~~ fuel management is allowed for the following building types: (1) Buildings permitted before the adoption of this Plan can maintain current areas ~~cleared~~ managed for fire safety or ~~clear~~ manage up to two acres around the existing home for fire safety purposes and (2) Buildings permitted after the adoption of this Plan can ~~clear~~ manage two acres around a new home for fire safety purposes, provided the ~~clearing~~ management does not interfere with the assembly of the preserve system.
• Outside the PAMA, ~~five~~ up to two acres of ~~clearing~~ management around a home (~~in~~exclusive of the building pad) is allowed on any single parcel.

• Up to ~~T~~two acres of ~~clearing~~ fuel management is allowed for the following building types: (1) Buildings permitted before the adoption of this Plan can maintain current areas cleared for fire safety or ~~clear~~ manage up to two acres around the existing home for fire safety purposes and (2) Buildings permitted after the adoption of this Plan can ~~clear~~ manage up to two acres around a new home for fire safety purposes, provided the clearing does not interfere with the assembly of the preserve system.

**7.6 Wildlife Crossings of Roadways (p. 92)**

*It is unacceptable for wildlife to be written off as road kill outside of PAMA*, if for no other reason than wildlife will travel in and out of PAMA, not being aware of the boundaries. It is also a question of basic humanity, which thus far DPLU has ignored. Thus, provisions for wildlife crossings outside of PAMA should be provided. As BMO compliance will be used as a substitute for CEQA review, reliance upon future project review under CEQA will not suffice.

Procedures (p. 92-3)

In the provision below, what is "evidence"? Is it radio-collared tracking data? Is it professional opinion of biologists? There will often be no tracking data, so topography and expert knowledge of wildlife behavior will have to be relied upon as to whether movement is expected.

These include areas with documented wildlife movement, areas mapped as linkages in the Planning Segments map (Figure 7-1), or areas with other convincing evidence is present that a significant number of wildlife species or individuals move through this area.

The following provision would allow an essential preserve function to be lost, which would render the wildlife agencies unable to issue permits for the plan.

> Design the project incorporating these structures into roadway designs, but only to the extent that they can be reasonably incorporated based on engineering constraints.

If the County makes an "infeasible" determination, then the reserve connectivity may not occur and the reserve will not function. There must be a *guarantee* of adequate wildlife movement for the permits to be issued. Wildlife movement must be maintained to achieve MSCP-North objectives, and there can be no compromise on this point beyond a threshold of adequately functioning corridors. Furthermore, "extent feasible" and "reasonably incorporated" are vague and undefined. Who judges? Is it the road-building agency whose purpose is to minimize costs?

Table 7-8. Minimization Measures to Facilitate Wildlife Movement across Roadways (p. 93)

In the following provision, small mammals should be protected from road kill and directed to crossings, as are small carnivores and larger mammals. There is no biological basis for excluding them.

> Small mammals (mice, voles, rabbits, skunks, raccoons, American badger, etc.)
>
> -Keep under crossings (culverts, bridges, etc.) as natural as possible. Where possible, retain natural surfaces, avoid use of riprap, and minimize fences and signage.
>
> -Directional fencing may be necessary in order to direct these animals toward crossing structures and prevent roadkill. Fencing may need to extend underground to prevent animals from digging under.

**7.7.1 Vector Control Projects (p. 96)**

Mosquito fish should be formally prohibited from distribution or sale, as escape into natural waterways is inevitable and as native fish can perform the same role in vector control.

> Mosquito fish (*Gambusia* spp.) – These fish, used to control mosquito larvae, will not be released into natural waterways. Instructions not to release these fish into natural waterways will accompany any distribution of these fish to the public.

**8.2.4 Critical Habitat Designation (p. 109)**

FWS must continue to designate critical habitat in the plan area because the

County is not the sole land use authority, e.g., school districts and federal projects are not subject to County land use regulation.

**8.5 Changed Circumstances**

**8.5.1 Repetitive Fire (p. 114)**

Repetitive fire of *any* quantity and frequency should be considered a Changed Circumstance rather than an Unforeseen Circumstance, given the repetitive holocausts of the past decade. The 1000-acre limit for coastal sage scrub does not correspond to recent experience, when many thousands of acres of this habitat burned at once. The limitation to PAMA is also inappropriate.

**8.5.4 Invasion of Exotic Species (p. 118)**

What is the quantitative threshold for Unforeseen Circumstance for exotic species invasion?

**8.5.7 Tribal Annexations (p. 121)**

In the event of annexations of PAMA into trust, there must be a commitment to revise PAMA and/or outcomes within PAMA to guarantee 1) no net loss of reserve acres and 2) no net loss of functions and value.

In addition, and most importantly, by the signing of the agreement, the Dept of the Interior (of which the BIA is a part) must contractually obligate itself to legally and *enforceably* guarantee the meeting of MSCP-N requirements by a Tribal Nation as a condition of any transfer. *This must be placed into the Implementing Agreement.*

**8.5.8. Climate Change (p. 123)**

What is the Unforeseen Circumstance threshold for climate change?

**8.6. Plan Amendment and Update**

**8.6.1. Transfer of Take Authorization & Annexation (p. 124)**

> Lands annexed for military bases (i.e., expansion of military base boundaries through acquisitions) will be removed from the Planning Area as an administrative adjustment, with conservation goals adjusted, accordingly. It is assumed that an integrated resource management plan for such a military base will adequately address conservation needs and be addressed through federal environmental review.

It is untenable for the reserve to shrink and take authorizations go unaltered. The reserve must be made whole in acreage and values, presumably through federal

acquisitions.

**8.6.2. Preserve Design Adjustments (p. 125)**

> In the following provision, there must also require no net loss of acres:
>
> Such adjustments to the PAMA or hard line project boundaries can be made without amending the Plan if the adjustment will result in no net loss of acres and the same or higher biological value to the preserve system.

**Definitions (p. 145)**

> Significant Population – A group or groups of sensitive species, wherever located, the loss of which would substantially reduce the likelihood of the survival and recovery of the species.

This sets an unreasonably high bar – the only time a population is significant is if its loss will lead directly to extinction. A new definition that is *different* from federal "jeopardy" standard is necessary. Please see below comment in the BMO section for a suggested definition.

**Appendix A – North County Biological Mitigation Ordinance**

The ordinance should be re-titled as the "Biological Resource Protection Ordinance," as the ordinance addresses project and preserve design to avoid or minimize impacts as well as mitigation.

**SEC. 86.511. DEFINITIONS**

The jeopardy standard is interpreted by FWS to describe an impact so severe that it would lead to actual extirpation (that is, appreciably reduces the chances of *survival* of a species). Thus, the language in the definition below, which uses the jeopardy standard, is completely inappropriate for "significant populations." Instead, EHL suggests that a "significant population" be defined as any group or groups of sensitive species, the loss of which would *materially contribute* to the reduction of the likelihood of the survival and/or recovery of the species in the County.

> (v) "Significant Population" means a group or groups of sensitive species, wherever located, the loss of which would ~~substantially reduce~~ materially contribute to the reduction of the likelihood of the survival and recovery of the species in The County as defined in the Plan's species specific goals and objectives.

In the definition of "suitable habitat," below, what is the justification for 5 years? This time period is far short of typical succession, disturbance, and hydrological regimes,

and would therefore eliminate habitat that has temporarily become available due to natural processes. *A time period is not necessary and is biologically invalid.*

> (x) "Suitable habitat" means an area that meets the habitat needs of a species ~~and~~ or is likely to be utilized by that species ~~at some point within a 5-year period~~ in the future. If an area appears to contain the appropriate elements for a species and is within dispersal distance of known populations and without substantial barriers, it should be considered suitable habitat unless demonstrated otherwise through appropriate and adequate field surveys.

The definition for "viable," below, sets too high a bar. Many San Diego habitats will never have the "full suite" of species, such as mountain lion. Also, in most locations, ecosystem functions are already compromised to some degree, and "normal" will never be achieved. EHL therefore suggests the following:

> (aa) "Viable" means capable of maintaining ~~normal~~ characteristic ecosystem functions over the long term (at least 50 years) ~~that sustain a full suite of native or naturalized species~~ without intensive direct human intervention. A viable population is defined as a population capable of persisting over the long term (at least 50 years).

**SEC. 86.512 GENERAL PROVISIONS**

The last sentence of subsection (a) includes a reference to "not interfere." This language inaccurately implies that implementation of this ordinance's provisions merely equates with "non-interference" as defined. Instead, the ordinance's standards are intended to proactively *promote* the assembly of a robust ecological preserve. The last clause should therefore be deleted.

> (a) No project requiring a discretionary permit shall be approved unless findings are made that the project is consistent with the Plan and the provisions of this article ~~and, therefore, will not interfere with the assembly of the North County preserve system~~.

Subsection (b) states that the exception to ordinance standards due to geographic constraints should be "the minimum necessary to afford relief and accommodate development." How much development? How much relief? And at what cost to the purpose of the ordinance? This phrase lacks any discernable meaning or limit.

EHL submits that owners of land containing "site specific physical conditions, including geology, slope, or location of infrastructure" purchased the land with awareness of these development constraints, and therefore should not unfairly enjoy a uniquely lenient and *ad hoc* conservation standard. Rather, the purpose of this provision is to provide a regulatory "safety valve" for those rare "hard cases" where application of the ordinance might present constitutional "takings" concerns. EHL therefore suggests that

the above sentence be replaced with "the minimum development entitlement necessary to avoid a unconstitutional 'taking' of private property from application of the ordinance":

> (b) In certain cases, during CEQA review or design of a project, site specific physical conditions, including geology, slope, or location of infrastructure, may be identified that make it infeasible for the project to meet all goals, criteria, or other requirements in the Plan, although the project could be constructed without compromising the conservation of species and/or habitat pursuant to the Plan. In such instances, the County may grant an exception to this article in conjunction with granting an exception to the Plan. The exception shall be the minimum ~~necessary to afford relief and accommodate~~ development entitlement necessary to avoid an unconstitutional "taking" of private property from application of the ordinance. An exception to the Plan requires the concurrence of the Wildlife Agencies.

**SEC. 86.513. EXEMPTIONS**

If 2 acres is sufficient for residential clearing for fire safety purposes within PAMA, then there is no justification for 5 acres of habitat destruction outside of PAMA. For the "2 acre" limits, it is also important to insert "up to" two acres, as the clearing is for fire purposes and may therefore result in *less* than 2 acres. Also, for the reasons described above, "management" should be substituted for "brushing and clearing."

> (1) ~~Brushing and clearing~~ Management of vegetation on a parcel that is zoned for single family residential use and contains an existing, permitted dwelling unit or structures associated with that use as of [adoption date], provided that the ~~brushing and clearing~~ management shall not exceed a total of ~~five~~ two acres and shall be located immediately adjacent to the structures associated with residential use.
>
> i. Parcels located within the PAMA shown on Attachment A may ~~clear~~ manage a total of up to two acres without complying with the terms of this article.
>
> ii. Parcels located outside the PAMA shown on Attachment B may ~~clear~~ manage a total of ~~five~~ up to two acres without complying with the terms of this article.

EHL understands that existing undeveloped parcels resulting from subdivision proposals that have already been through the modern subdivision process should not have to run the gauntlet twice at the grading/clearing permit stage. EHL does not oppose a limited exemption for such parcels, as described above, for fire safety purposes.

The exemption as proposed, however, would also apply to development on parcels resulting from land subdivided *long before* there was any environmental review at all. As to these parcels, there is no basis in fairness or in logic to permit destruction of up to 5 acres habitat for development of a zoned parcel outside of PAMA without regard to its intrinsic value or its contribution narrow endemic species, without any effort to avoid

no matter how feasible, and without any mitigation for losses caused.

The common sense solution to these issues is a *consistent* exemption for up to 2 acres of clearing for *all* legal parcels, which corresponds to the maximum needed for legitimate fire clearing, both within and outside of PAMA. Clearing in excess of this amount would be subject to the BMO through a discretionary grading permit.

The exemption for County facilities remains deeply flawed and overly broad:

> (c) **County facilitie**s or public projects, determined to be essential by the County, including but not limited to a County Park or County Recreational facilities.

This *uncalled for* exemption would apply broadly to any public project that in the subjective determination of the County or other public agency is "essential." For example, there is nothing inherently "essential" about recreational facilities or libraries in terms of public safety, yet that determination could still be made. As in the South County MSCP, the County of San Diego should *comply fully* with the Plan. This exemption is altogether unwarranted. The County should be a model for the private sector, rather than set a bad example through a double standard.

Not only is the exemption unwarranted, but it also threatens the Ordinance's ability to authorize "taking" of listed species covered by the Plan under the State and Federal Endangered Species Acts, or to address the significance of impacts under CEQA and other environmental statutes. Neither the County nor other public agencies are exempt from these laws.

Under this exemption, public agencies would have the ability to inflict *undetermined* damage to habitat, linkages, core areas, and corridors within the Plan Area. Such damage undermines the integrity of the reserve as a whole, upon which *all* Third Party "take" authorization will ultimately depend. Without some assurance that *all* stakeholders, both public and private, will follow through on reserve design principles, the ability of state and federal resource agencies to approve the Plan is placed at significant risk. County projects, and other public projects over which the County has discretionary regulatory, should not be exempt.

The below provision for agricultural operations fails to include the "exit strategy" to dedicate habitat within PAMA if development is later proposed:

> (g) The establishment or expansion of any **agricultural operation** onto natural habitat within the Plan area and outside of the PAMA provided that the following are required as conditions of any use permit approved for such project.

The provision for "minor impacts" is fundamentally flawed:

> (h) Lot splits or other minor projects that cause **minor impacts** and meet all the following criteria:

(1) The project site is located entirely outside the PAMA.
(2) The project will not affect Tier I habitat.
(3) The project will not affect more than one quarter acre of Tier II habitat.
(4) The project will not affect more than one acre of Tier III habitat.
(5) The project will not impact any narrow endemic species or their suitable habitat.

These "minor impact" exemptions are unacceptable and elimination is imperative. There is no public benefit – and therefore no policy rationale – for allowing a free ride to subdividers and other project applicants who are *already* benefiting from a streamlined County entitlement, CEQA, and/or approval process due to the NC-MSCP.

On technical and permitting levels, they are also unacceptable. These are hardly negligible impacts, due to the size of the proposed impacts and because many such impacts can be piecemealed over time into a larger impact. There is no guard against such incremental but *cumulative* loss, and it has not been accounted for in the Plan. "Quarter acre" and "one acre" are *substantial* amounts of habitat that can and should be mitigated by project applicants.

Because the cumulative effect of the "minor impact" exemptions has not been assessed or determined, the existence of this exemption undermines the integrity of the reserve as a whole, upon which *all* Third Party "take" authorization will ultimately depend. Because these cumulative impacts affect both species and the efficacy of preserve assembly, the ability of state and federal resource agencies to approve the Plan is also placed at risk. *The entirety of this thoroughly ill-conceived section should therefore be deleted*, noting that it is not present in the South County MSCP. As there have been no problems with "minor" projects in the South County MSCP, this is truly a solution in search of a problem.

**SEC. 86.514. FINDINGS FOR EXEMPT PROJECTS**

The arroyo toad has very specialized and restricted habitat for breeding. It should be classified as a narrow endemic, as it is in the South County MSCP. Therefore, please add the arroyo toad to the narrow endemic list (Attachment E) so that exemptions account for this key covered species.

Unlike the draft North County BMO, the findings for exempted projects in the South County BMO provided for substantive MSCP conformance. In the case of residential clearing, the South County MSCP requires a finding that "the clearing will not interfere with the assembly of the MSCP Preserve according to the terms of the MSCP Plan and the Subarea Plan." In spite of the fact that no problems needing fixing have been identified, this standard is proposed to be weakened in the North County to "will not directly or indirectly impact an open space preserve."

This means that, for residential clearing, only effects on land *already* incorporated

as preserve will be considered, rather than on ongoing and necessary preserve assembly. There has been no quantification of the impacts of this weakened standard to species or to preserve assembly, thus jeopardizing the ability of the state and federal agencies to approve the Plan. At a minimum, finding (2) should be changed as follows:

> **SEC. 86.514. FINDINGS FOR EXEMPT PROJECTS**
> (a) The single family residential projects described in section 86.513(a) may be exempt from the provisions of this article and may receive Third Party Beneficiary if it can be found that:
> (2) The project will not directly or indirectly impact an open space preserve or interfere with the assembly of the MSCP Preserve according to the terms of the MSCP Plan.

In the case of public projects, in comparison with the South County BMO, the draft North County BMO findings propose a *severely weakened double standard* for a vast array of projects and facilities. Specifically, the South County provisions require full MSCP consistency, all feasible less damaging alternatives and all feasible mitigation, net gains of wetland and riparian habitat if encroachment, native vegetation for revegetation, protections for mature riparian woodlands, and provisions protecting a full list of sensitive, critical, rare, or endemic species.

By requiring avoidance only for the extremely limited list of Attachment E narrow endemics, the current language opens the door to widespread impacts to species and habitats *without* avoidance or the consideration and implementation of feasible alternatives. *There is no reason for the County not to evaluate alternative designs and alternative sites that reduce impacts to the preserve.* In regard to public projects, why isn't the County itself required to respect the endangered arroyo toad or California gnatcatcher, which are not in Attachment E? Government must set a high standard and not abuse its power. The treatment of public projects in the South County MSCP should be carried over to the North County.

**SEC. 86.518. PROJECT AND PRESERVE DESIGN CRITERIA**

The following section is flawed unless the definition "significant populations" is corrected (see above for suggested remedy):

> (5) Rare Species. Preserve significant populations (see Plan, Volume II) of sensitive or listed species, and species listed in Attachment E, when they are found on site. Minimize impacts to smaller populations or mitigated appropriately.

**SEC. 86.519. HABITAT BASED MITIGATION.**

This section should be re-titled "Habitat-Based Resource Protection"

The mitigation ratios are abysmally low, and do not reflect the regional depletion

of habitat and the problem of fire-induced type-conversion. Losing 2/3rds of annual grassland and chaparral (0.5:1), and half of coastal sage scrub (1:1), are not sustainable bases for reserve assembly. These ratios should be substantially increased, both inside and outside of PAMA.

When mitigation is going off site, *in kind* mitigation should be required for Tier II habitats such as coastal sage scrub, due to their depletion in the study area. Out of kind mitigation undermines meeting the coastal sage scrub preservation targets in PAMA, especially considering that coastal sage scrub will be preferentially targeted for development and loss due to its presence on gentler slopes. It is also counterproductive and illogical to replace coastal sage scrub with oak woodland or riparian habitat, *as those habitats are almost always avoided in the land use process*, such as via wetlands permitting. It also makes no sense biologically. On the other hand, as non-native grassland was often historically coastal sage scrub, and due to the relative abundance of chaparral, up-tier mitigation is appropriate for Tier III. Also, in deference to the project and preserve design process, up-tiering of Tier II should continue to be allowed as part of on site dedications of biological open space.

Consistent with Section 5.4.2 of the Plan, the following section should be revised to reflect the preserve assembly assumptions:

> (d) Lands ~~used~~ set aside for mitigation or ~~otherwise outside of the developable area~~ to make preserve design findings will be permanently conserved through an appropriate mechanism (e.g., conservation easement, fee title transfer, other easement, etc…).

**SEC. 86.520. SPECIES-BASED MITIGATION.**

This section should be re-titled "Species-Based Resource Protection."

Regarding the arroyo toad, foraging is an essential activity that should be reflected in the ordinance. Also, the distance from streams should be 1.5 km. This is a reasonable compromise that captures the majority but not all toads. *Personal communication Pete Bloom (March 15, 2008): Although arroyo toads have been found 3.4 kilometers from nearest breeding sites, the great majority would be encompassed within 1.5 kilometers.*

Undertaking surveys to prove absence of toads from uplands within 1 km of occupied stream segments are not realistic or feasible. Toads are wide-ranging and widely dispersed, and only highly extensive, multi-year trapping would be effective to document absence. At a minimum, "adequate surveys" must be defined by the wildlife agencies in advance. The current language for surveys is thus best eliminated.

Very importantly, the language does not account for the fact that breeding locations will vary over time as flood and sediment regimes change the location of gravel beds. If suitable stream segments and associated uplands are not protected up and down

the few remaining viable watercourses, the arroyo toad will be extirpated. In order to justify coverage of this species – and to preserve San Diego's wildlife heritage – the language below must be changed:

> (3) Impacts to suitable Arroyo toad breeding or foraging habitat or aestivation sites within ~~one~~ 1.5 kilometers (~~3280~~ 4920 feet) in any direction of ~~occupied breeding~~ suitable stream segments (unless very steep slopes or other barriers constrain movement) shall be avoided to the maximum extent practicable. ~~If upland areas within 1 km are not utilized by Arroyo toads, as demonstrated by appropriate and adequate surveys, mitigation for Arroyo toad will not be required.~~ Otherwise, where complete avoidance is infeasible, one or both of the following mitigation measures shall be required:
>
> (B) Suitable upland aestivation or foraging sites must be mitigated at 2:1 ratio with restoration of disturbed sites comprising at least one component. All mitigation for impacts to suitable arroyo toad upland aestivation sites should occur within 1.5 km of a known breeding population.

**Attachment D - List of Vegetation Communities / Tier Levels**

In kind requirements should be broadened to all Tier I and II habitats, as described above.

**Appendix G Framework Resource Management Plan**

The following sections on fire management should be revised consistent with the findings of the Vegetation Management Report, recently completed by DPLU. Appropriate programs of thinning in conifer forests and spatially limited strategic fuel treatments in scrub communities should be described. The narrow circumstances under which such treatments actually enhance ecosystem health should also be described.

If, as proposed below, vegetation management is going to be covered under the Plan permit as adaptive management without additional mitigation, and conducted under the programmatic CEQA review for the Plan, several conditions will have to be met:

- Adequate Project Description. Proposed actions to manage the preserves to ensure fire safety must be described in sufficient detail and sufficiently delimited in the Plan to permit adequate evaluation and analysis of their impacts under CEQA. Thus, the geographical extent of vegetation modification, the intended locations of such modifications, the methods to be used and the principles governing their selection must be articulated in advance to the maximum extent practicable to permit review and analysis of these actions' impacts on biological functions.
- The Plan contains well documented and specified criteria for meeting ecosystem

health and resiliency objectives.

- There is a full analysis of impacts and mitigation at the program level, with clear guidance for the subsequent project level adaptive management.
- There are requirements for regular reassessment of the adaptive management vegetation management regime, in light of new scientific information and monitoring data, e.g., every five years.

**3.4 Vegetation Management** *(Section Under Development) (p. 17)*

Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD. Vegetation management activities are covered under the Plan and lead to ecosystem health, resiliency, and fire safety. Each Ecosystem Health Plan will be prepared using the guidelines in Section 4 for the particular vegetation communities in mind. A variety of measures may be required such as maintaining fuel management zones, creating and maintaining fuel breaks, vegetation thinning, fire suppression, and controlled burns. There are a variety of methods that may be used, including but not limited to hand thinning, controlled ignitions, managed grazing, creating fire lines, mowing, and water or retardant drops. Since these measures are intended to adaptively manage for ecosystem health and public safety, mitigation will not be required and these activities will be covered under the Plan permit.

**4.2 Coastal Sage Scrub, Chaparral, and Grassland Habitat (p. 21)**

**4.3 Oak Woodlands and Coniferous Forest (p. 24)**

**8 PLANNING SEGMENTS** *(Section Under Development)* **(p. 35)**

This section has been inexcusably gutted since the last draft, and relegated to the Framework Resource Management Plan. It should be restored to its own important standalone location or integrated into the Plan itself. Substantively, the tie between core area goals and project and preserve design using *findings* has been severed. The following language was removed:

> Each planning unit provides guidance for each of these criteria and how to prioritize avoidance measures and make findings for each finding. Findings relate to goals on the following: (1) sensitive habitats, (2) diversity, (3) rare species, (4) connectivity, (5) wetlands, and (6) edge effects. There are also specific linkage and corridor findings that must be made for projects.

Instead, vague and permissive language that opens the door to failed preserve assembly has been inserted after references to project review under the BMO:

> Nothing in this document should be construed to mean that all areas within planning segments must be avoided or that development should be reduced beyond what is allowed under current zoning; instead, this document should be

used to help identify high priority conservation objectives, so that potential development may be sited in areas with lower priority for conservation.

*No longer will project approvals have to link back to Planning Segment criteria through findings.* If the Planning Segment goals are merely used for "priority setting" – as now proposed – there will be no thresholds to ensure proper preserve assembly and therefore species conservation. This is unpermitable from an ESA standpoint.

Essentially, what is proposed is that each development project "do the best it can" to avoid critical areas, but if "the best it can" is not good enough, then its too bad for the preserve. There is no fail safe, as would have been provided by findings linking back to overall Planning Segment goals. If project-by-project review under the BMO becomes the sole arbiter of successful preserve design, then fatal flaws in preserve design will go unheeded. Furthermore, the *cumulative* impacts of multiple projects on a core area may fragment habitat beyond the point of functionality without any mechanism to recognize that a limit has been reached. Thus, the original language requiring findings for meeting Planning Segment goals must be restored. It is also essential to add a 7th goal for "core areas."

These structural problems are compounded by the fact that the Planning Segment goals themselves have been watered down. Rather than "Conservation Objectives," only very general goals are now offered. For example, *percent conservation goals* have been dropped, thus failing to establish thresholds below which core areas are no longer viable, and opening the door to project-by-project losses that leave the MSCP without functioning cores. We again urge that a "core area" section be added to list of findings for each planning unit and quantified goals set. Under core areas, Conservation Objectives should address large, *unfragmented* habitat blocks, natural processes, and ecological gradients, as described in the Preserve Design Criteria of the ordinance.

Good examples are the Guejito Creek Core and the Elfin Forest Core. The previous language on Elfin Forest for coastal sages scrub was as follows:

> Conserve at least 75% of the coastal sage scrub in this area to maintain the biological integrity for coastal sage scrub-dependent species, including a core population of California gnatcatcher. In particular, minimize impacts to high and moderate quality coastal sage scrub habitat (as defined in NCCP Guidelines) and maintain uninterrupted patches of coastal sage scrub over 10 acres.

This was been replaced by less specific language on "minimizing" impacts:

> Minimize impacts to the following sensitive habitats: chaparral on mafic soils supporting sensitive plant species, such as Parry's tetracoccus; coastal sage scrub to maintain populations and connectivity of coastal sage scrub-dependent species, including a core population of California gnatcatcher.

The reality is that, in Elfin Forest, little or no gnatcatcher habitat can be lost and

the earlier 75% threshold is too low. Rather, guidance should be provided to establish a robust and viable gnatcatcher *source* population. This should include requirements for preserving all gentle slope to flat coastal sage scrub, which is of unique value to the gnatcatcher as breeding and refugium habitat. In formulating these requirements, the County should reference its own scientific studies that were conducted by ornithologist Brian Foster for the Bridges Unit 7 parcel and surrounding core area. In brief, Foster found that the number of gnatcatchers currently supported is of marginal viability for gnatcatcher populations in the long term and cannot sustain further significant habitat loss.

For the Guejito Creek Core, the old language was as follows:

> Conserve at least 80% of the natural upland habitats in a configuration that maintains use by a natural suite of species, including large and medium-sized mammals in this area.
>
> Maintain at least 80% of the existing large stands (over 2800 acres) of Engelmann oak woodlands. Conservation of the Engelmann oak woodlands on the northern portion of the planning unit should be given higher priority.

New language is again focused on vague "minimization":

> Minimize impacts to the following sensitive habitats: Vernal pools, Alkali meadows, Coniferous forests, particularly at higher elevations (e.g., above 2,500 feet), Coast live oak woodlands, Engelmann oak woodlands, particularly in the northern portion of the planning unit, Grasslands (meadows), particularly at higher elevations (e.g.,above 2,500 feet), especially those that are native or support Stephens' kangaroo rat, Grasshopper sparrow, or large numbers of raptors, and Chaparral on mafic soils supporting sensitive plant species, such as Chaparral beargrass and Parry's tetracoccus.

Indeed, even the original figures of 75 or 80% used for grasslands, Engelmann oaks, etc. are too low. This is not a sufficient level of conservation for such high value, high ecological integrity habitat. It will result in fragmentation of the core area and loss of the only remaining intact landscape in the NC-MSCP.

DPLU's response to EHL's earlier comments on these issues was as follows:

> A-111 The Planning Unit criteria will be revised to be consistent with the Preserve Design Criteria listed in the BMO. There was insufficient time to incorporate these changes in the preliminary draft after refining the Preserve Design Criteria.

*Such revision has not occurred.* The Planning Segment goals remain woefully generalized and also lacking consideration of core area fragmentation.

Thank you for considering these comments. We again appreciate the progress to date, and look forward to working with you to resolve our concerns.

With best regards,

Dan Silver
Executive Director

Electronic copy: LUEG
DPLU
USFWS
CDFG
Interested parties

# North County Biological Mitigation Ordinance

The ordinance should be re-titled as the "Biological Resource Protection Ordinance," as the ordinance addresses project and preserve design to avoid or minimize impacts as well as mitigation.

**SEC. 86.519. HABITAT BASED MITIGATION.**

This section should be re-titled "Habitat-Based Resource Protection"

Consistent with Section 5.4.2 of the Plan, the following section should be revised to reflect the preserve assembly assumptions:

> (d) Lands ~~used~~ set aside for mitigation or ~~otherwise outside of the developable area~~ to make preserve design findings will be permanently conserved through an appropriate mechanism (e.g., conservation easement, fee title transfer, other easement, etc…).

**SEC. 86.520. SPECIES-BASED MITIGATION.**

This section should be re-titled "Species-Based Resource Protection."

Elfin Forest/
Harmony Grove
Town Council

Dedicated to a continuing rural atmosphere

20223 Elfin Forest Rd., Elfin Forest, CA 92029



April 4, 2009

Jared Underwood
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

Mr. Underwood,

The Elfin Forest Harmony Grove Town Council appreciates the opportunity to review and comment on the draft Multi Species Conservation Program (MSCP) North County Plan.

The Elfin Forest and Harmony Grove communities have a long history of working to protect the habitats targeted by the North County program while maintaining a vibrant working landscape with homes and agriculture. There is a strong statement in our existing community plan and we have proposed even more extensive policies in the new General Plan. It has been the hard work over many years by the residents of these communities, conserving what now represents some of the best examples of gnatcatcher occupied Costal Sage Scrub (CSS) remaining. The very name of the community - Elfin Forest - refers to the Chaparral habitat.

With the recent addition of Sage Hills there are now over 1,820 acres of dedicated open space in the Elfin Forest area alone providing a good start for helping the MSCP achieve its conservation goals.

Specific comments following the text of the draft plan follow:

Page 1 – **1.1 Overview**:

Please add Elfin Forest to the list of communities listed on page 1 and elsewhere in the document where the communities are mentioned. Elfin Forest is distinct from Harmony Grove, and as a cornerstone community named for a habitat it is perplexing to not have it listed.

Page 5 – **2.1 Geographic location**:

Ditto, please list Elfin Forest along Harmony Grove under "Major communities within the Plan include…"

Page 3 **1.3 Purpose and Need -Federal and State bullet**.

Please add the underlined language that Federal and State government **will continue to acquire critical habitat** and mitigate….This is based on the commitments made by the Federal and State agencies when the MSCP was created that they would contribute to acquisitions. The Federal and State agencies have lived up to these commitments in the past as shown by the success of the MSCP so far and they should be happy to restate them in this document. Due to the economic conditions many key properties with habitat are available for acquisition and the State and Federal agencies can and have played a key role in making this possible.

Page 9 – **2.4.1 County Lands (3) Escondido Creek Open Space**:

Acreage owned by the County is incorrectly identified: it is actually 500 acres, instead of the 165 noted in the plan. Properties owned by the County in the Escondido watershed have the following APNs and associated acreage:

| | |
|---|---|
| 270-01-005 | 12.9 |
| 270-01-002 | 80 |
| 238-02-034 | 92 |
| 238-02-037 | 168.66 |
| 238-02-036 | 83.86 |
| 679.13.012 | 27.36 |
| 264-03-210 | 12.42 |
| 264-04-113 | 23.24 |
| Total | 500.44 |

In addition, The County recently completed the acquisition of Sage Hillss, also in the Escondido Creek watershed, for a total of 227 acres. APNs for Sage hills follow:

| | |
|---|---|
| 679-06-004 | 84.86 |
| 679-06-006 | 10.09 |
| 679-06-007 | 10.06 |
| 679-06-010 | 33.54 |
| 679-10-001 | 18.37 |
| 679-10-003 | 10.45 |
| 679-10-004 | 10.27 |
| 679-10-002 | 49.77 |
| ***Total acreage*** | ***227.41*** |

So if we add Sage Hillss, we really have a total of 692 acres owned by the County of San Diego in Elfin Forest in the Escondido Creek watershed, instead of the 165 acres noted in the draft plan. It is important to accurately identify the open space already conserved because of the emphasis in the plan on unfragmented habitat blocks and linkages.

Page 14 -**2.6 Human Population Growth**:

Because as noted "the rapid human population growth in this region has led to conflicts with conservation of sensitive species", it is very important that the population vector be clearly and accurately described. In order to be able to compare the projections for the population in San

Diego County overall and the projections for the Unincorporated area, the periods of reference should be the same. The projections given are for 2030 for the County overall, but for 2020 for the Unincorporated area. The most relevant projections though from a land use perspective should be the *housing* growth numbers, which do not exactly track population growth. Further, and to put the MSCP North in its proper context, the most relevant numbers are missing: they should be the projected population numbers for the area of the Plan, which is not all of the Unincorporated area but only North County. We propose adding a table with the following information (note that shaded area is an extrapolation):

| Dates | San Diego County population | Decade population growth | Unincorporated County area population | % growth | Plan area population and/or housing | Decade housing growth in the Plan Area |
|---|---|---|---|---|---|---|
| 1980 | ? | 3% | ? | | ? | ? |
| 1990 | 2,500,000 | 1.3% | ? | | ? | <1% |
| 2000 | 2,800,000 | ? | 451,585 (or later? only referred to as "existing") | 1.96% from 2000 to 2020 | ? | ? |
| 2020 | ? | ? | 666,576 | | ? | ? |
| 2030 | 3,900,000 | ? | ? 634,000 if stays at 16% of County total | Would be a decline | ? | ? |

There should be a direct linkage between expected growth in housing and amount of land set aside specifically for development. That approach might provide for larger blocks of habitat in aggregate to be set aside for conservation.

Page 12 – **2.4.4 Other Open Space Areas**:

There are a number of omissions or errors in this section, which do not reflect the existing conditions on the ground in Elfin Forest regarding currently preserved open space not identified above under "County Lands".

Please include The Escondido Creek Conservancy along with CNLM and the Fallbrook Land Conservancy in this section. TECC owns or manages 250 acres of open space in Elfin Forest. APNs for those properties follow:

| APN | Acreage |
|---|---|
| 264-68-001 | 59.14 |
| 679-14-012 | 10.32 |
| 679-14-015 | 34.86 |
| 238-01-049 | 10.01 |
| 235-01-107 | 11.17 |
| 264-04-102 | 73 |
| 264-51-001 | 21.34 |
| 679-05-011 | 29.98 |
| | ***249.82*** |

In addition, under the same paragraph, the land owned by CNLM includes a large parcel in the Escondido watershed in Elfin Forest for an additional 106 acres (APN 264-11-112). The total acreage owned by CNLM should therefore be adjusted to 429, up from 323 in the draft Plan.

Finally, although water districts are excluded from the Plan, it is notable that in Elfin Forest, hundreds of acres of open space have been preserved by OMWD and SDWA, respectively. The San Diego Water Authority owns a total of 652 acres principally located around the dam in Elfin Forest. APNs of subject properties are as follows:

| | |
|---|---|
| 264-06-102 | 241.35 |
| 264-06-101 | 81.95 |
| 264-06-025 | 62.89 |
| 270-01-001 | 152.02 |
| 270-01-008 | 40 |
| 270-01-009 | 40 |
| 238-02-010 | 33.84 |
| ***Total*** | ***652.05*** |

OMWD also owns significant preserved open space in Elfin Forest, principally the Elfin Forest Reserve but also other large blocks of coastal sage scrub adjacent to CNLM lands. Those properties APNs and acreage are as follows:

| | |
|---|---|
| 264-03-208 | 17.37 |
| 264-03-207 | 10.4 |
| 264-03-243 | 10.04 |
| 264-03-212 | 10.36 |
| 164-03-224 | 19.29 |
| | |
| 264-10-402 | 16.23 |
| 264-10-403 | 11.99 |
| 264-11-106 | 25.17 |
| | |
| 264-06-022 | 37.43 |
| 264-06-024 | 27.04 |
| 679-14-010 | 17.89 |
| 679-14-008 | 17.05 |
| 679-14-009 | 15.18 |
| ***Total*** | ***235.44*** |

So in total, with these corrections, a total of 1,827 acres is currently conserved in Elfin Forest. Elsewhere in the draft plan is mention of Elfin Forest being home to the largest patch of undisturbed coastal sage scrub (over 1200 acres), which makes the area a top candidate for priority preserve assembly.

Page 18 – **Transportation and utility corridors**:

As noted above, in Elfin Forest and Harmony Grove, OMWD (Olivenhain Metropolitan Water District) owns a total of 235 acres of preserved open space, and SDWA owns 652 acres of preserved open space (including the Elfin Forest Reserve). These two land holdings combined should not be excluded from the Plan Area, because they provide critical linkages and

unfragmented habitat blocks for several species of interest, not notably the California gnatcatcher.

Page 24 - **Section 3.2.7. History of Preserve Design**.

There appear to be recent changes of the PAMA (possibly between 7.0 and 8.0) where previously in our community homes and agriculture were not within the hard-line and now changes to the hard-line include some lands. We would appreciate the opportunity to meet with staff and review appropriate hard-lines. It is understood that the hard-lines are generally from overall mapping data and it would be constructive to have the community with specific knowledge assist in appropriate adjustments to the hard-line areas.

Page 26 - **4.1 Overview**

It appears a "to" is missing from the 2nd sentence of the second paragraph:

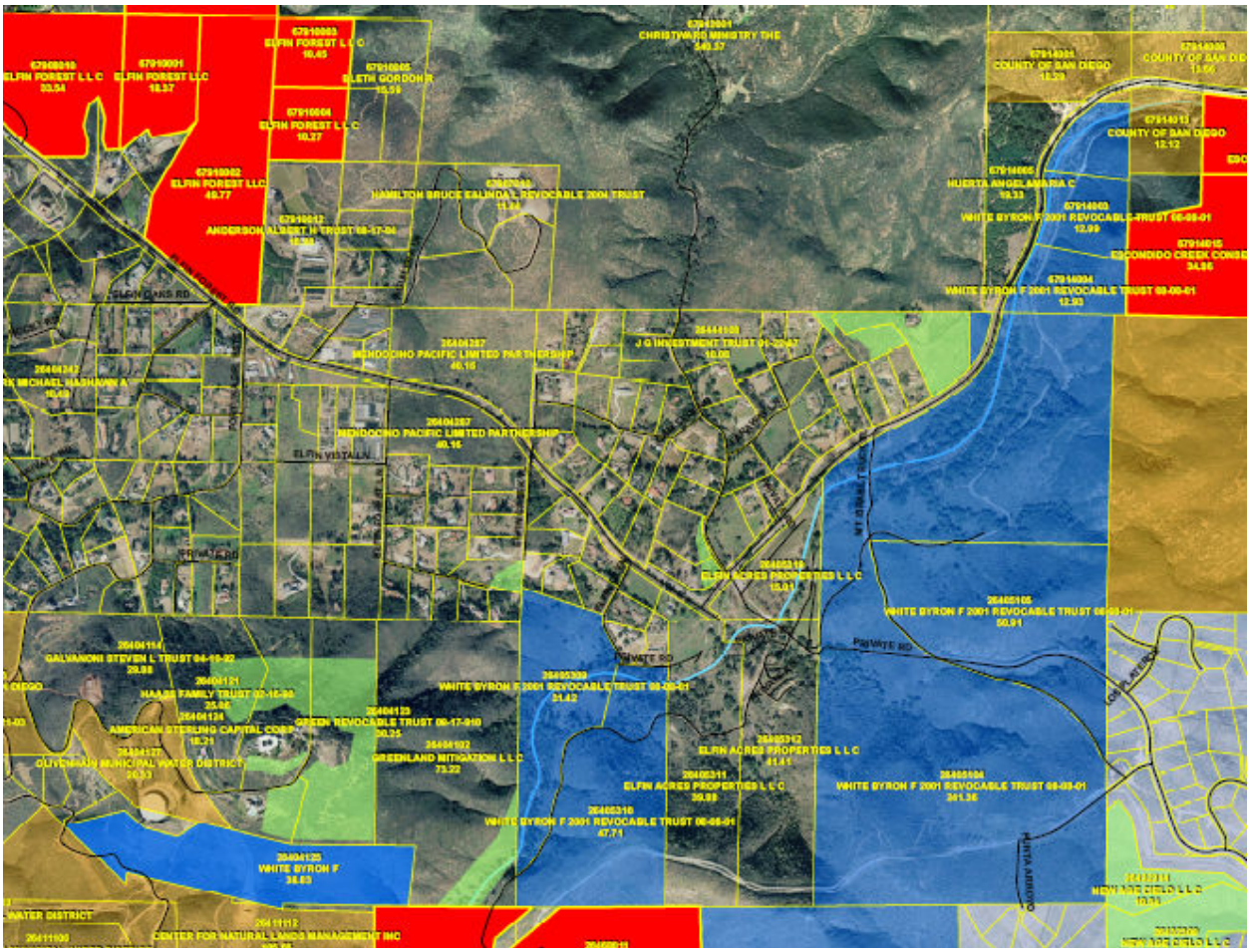
> … future development at the estimated level is not expected <u>to</u> impact assembly of the North County preserve.

In this section the overall mitigation for impact is shown as barely 1.1, which appears woefully low to ensure no net loss of habitat. We would recommend going back to the previous iteration of the plan which linked specific goals and numerical objectives to findings, so the overall reserve can be properly assembled.

Page 27 – 4.2 **Hardline Development Projects**

We realize the hardline areas have been negotiated with stakeholders, but hope Cielo Del Norte can be revisited. We would respectfully request removing this project from the list of hardline project. This 468 acres project is located in the heart of Elfin Forest (not "near the Elfin Forest area" as noted on page 10 of Appendix E), and will impact primarily occupied coastal sage scrub. It also breaks up a major corridor of preserved open space, with the Elfin Forest Reserve directly adjacent to the East, and conserved lands to the West. At a minimum the project should be required to purchase the coastal sage scrub component of the mitigation in Elfin Forest, as opposed to the larger North Valley Ecoregion, as currently authorized.

The map below shows the project (highlighted in blue) with to the East a 35 acre parcel belonging to The Escondido Creek Conservancy (in red), and the 652 acres SDWA property (in brown). To the North East are parcels owned as open space by the County of San Diego. To the South is a property owned by TECC (in red) for 55 acres of open space. To the West is Greenland Mitigation, managed by TECC, with 72 acres of open space, and connecting to a very large habitat block of coastal sage scrub primarily, continuing to the West through CNLM and OMWD properties all managed as biological open space. In between the two parcels of Cielo del Norte is Elfin Acres properties, a block of 70 acres also preserved. Allowing Cielo del Norte to break up this wide habitat corridor would have a negative impact on the preserve assembly. We would respectfully suggest this property be considered for habitat acquisition instead.




Page 31 – **Expected Future Development Impacts**

The plan notes that "it is anticipated that a total of 34,703 acres of natural habitats will be impacted (..) both future single family residences as well as large discretionary projects". Given the current land use shown in table 2.3 indicates only 102,725 acres of "vacant and undeveloped land", to allocate over a third for development, in the face of demographic projections which may indicate a flat or declining population (pending response to questions posed above under 2.6), begs the question of whether the growth in natural lands losses to developments is in line with housing growth projections.

Page 32 - **4.4.2 County Trails Program**

Throughout the community there are non-motorized trails built by the community for the community which may not be on the County master trails plan. Besides the Community Master Trail Plans there are other trail opportunities that are compatible with the mission of habitat preservation of the dedicated open space. This section should have some language acknowledging these trail opportunities and allowing them where appropriate. In some circumstances trails may not be appropriate, such as when they bisect habitat and bring human disturbances to a previously pristine habitat. Such was the case in our community with the trail on the County-owned Derbas property, where the trail route was located above a nesting eagle which has since departed.

Page 33 - **4.5.2 Fire Clearing**

This is a critically important issue and the community strongly supports and recommends that this section remain. We would however suggest changing the language throughout the plan to "up to 2 acres", instead of 2 acres, as well as substituting fuel management for clearing, since it is more appropriate. Further, outside the PAMA there is really no reason to go from 2 acres of clearing to a full 5 acres for a residential lot. At the very least, text should read "up to 5 acres". Past wildfires which jumped the width of interstates have demonstrated that while fuel management is certainly critical around structures, indiscriminate clearing does not necessarily afford greater safety.

Page 36 **4.8 (new) Elfin Forest Harmony Grove**

Consider adding a new section 4.8 covering Elfin Forest and Harmony Grove as a key area with important core gnatcatcher habitat and opportunities for creation and restoration of vernal pools. We propose working with the county to add a new section covering this area. There are some important opportunities to maintain, create and preserve additional critical habitat using innovative proposals discussed at the San Diego County Working Lands Symposium such as the use of Purchase Development Rights, special treatment of religious lands dedicated to preservation of habitat and unique agricultural operations creating "farmed habitat". Some of these opportunities are also described in 5.3.6 Non-Financial Methods of Habitat Conservation.

Page 39 **Table 5-1 Preserve Assembly Overview**

As noted earlier, "Existing Public Contributions to Preserve" should be updated to reflect the acreage identified in Elfin Forest, such as:

- under "Escondido Creek properties", existing County holdings acreage is 692 instead of 207
- under "Elfin Forest (for MHCP, owned by CNLM), existing acreage is 429 instead of 323
- Add "OMWD" with 235 acres
- Add SDWA with 652 acres

Similarly, "Private Contributions to Preserve" need to include:

- The Escondido Creek Conservancy - 250 acres

Page 40 **State Contributions**

The plan notes that Caltrans "owns 1,805 acres of right-of-way within the Plan area, some of which contains important habitat lands such as the CSS habitat adjacent to I-15 which functions as a linkage for California gnatcatchers". The argument is presented that while it is "likely" for this linkage to be impacted by future road projects, no adjustment is necessary from a preserve assembly analysis standpoint, partly because a significant portion will remain in their natural condition "since many of them are relatively steep slopes besides highways". However California gnatcatchers do not live on steep slopes, seeking instead gentle sloping lands, so it is indeed likely that road projects will impact the viability of this linkage corridor. Further, on page 21 under 3.2.4 Preserve Design Modeling, it is noted that:

> Upon review of the preserve design, the Wildlife Agencies believed several corridors that relied only upon natural habitats needed to be enhanced to provide adequate conservation. One of the main enhancements to the SITES preserve model (i.e., PAMA) was a north-south movement corridor for the California gnatcatcher. A corridor of natural and agricultural habitats was added adjacent to Interstate 15, where a significant number of California gnatcatcher sightings have occurred within Caltrans right-of-ways. This corridor is generally 1,000 feet wide on either side of the highway, but excludes areas that are highly developed, do not contain a significant amount of coastal sage scrub, or are planned as hardlined development projects.

These two data points need to be reconciled: either the model assumes a north/south linkage using the Caltrans ROW, and any losses due to "likely" road projects need to be accounted for and mitigated, or a different North/South linkage needs to be studied and protected: perhaps one from Lake Hodges through to Carlsbad via Elfin Forest, where a number of parcels have already been conserved for habitat preservation?

Page 43 **Land Acquisition**

The baseline preserves acreage in table 5-2 may need adjusting, or merit another note. Under "Public Agencies", total acreage is 12,926, and the note indicates this is Federal, State and County agencies. Yet in table 2-1 on page 6, BLM, County and Caltrans holdings alone add up to 18,343 acres.
As noted prior, the baseline for "other" (non profit organizations and MHCP preserve areas) is also very low, just based on the discrepancies only in Elfin Forest which are detailed above.

Page 51 **Private**

There appears to be a discrepancy in the acreage for future development impact on natural lands. Plan notes:

> Future development within the Plan area will result in the acquisition of 42,216 acres of natural lands.

Yet table 4-1 on page 26 identifies 43,830.50 in total impacts, only 36,780 due to development: please explain the discrepancy.

Page 51 **5.3.6 Non-financial methods of Habitat Conservation**

We suggest revising the title as most of the programs describe have financial implications to the property owners.

Page 56 **5.4.2 Permanent Resource Protection**
We concur with and support this approach, which is essential for preserve assembly and thus permitting by the wildlife agencies. However, it needs to be carried through to the BMO so that implementation occurs.

> • Lands set aside in order to make preserve design findings in the BMO will be permanently protected with biological conservation easements, perpetual open space easements equivalent to conservation easements or, dedications in fee to the County or other government agency or nonprofit entity with a stated conservation

mission.

Page 69 **In-kind Mitigation**

Add new language to require that CSS impacted must be mitigated by CSS. This is of critical importance to maintain the viability of the CSS communities. For example if mitigation of CSS impacts is allowed with Chaparral, in general of lower habitat value and more common in our community, significant fragmentation and loss of core gnatcatcher areas could occur. Further, in our area all mitigation should be in-kind, because there are so few large patches of coastal sage scrub left in North County. This would provide an additional level of protection for rapidly dwindling habitat of great interest to development interests. To allow the replacement of CSS with chaparral or another type of habitat makes no sense from a habitat preservation standpoint, since the species like the gnatcatcher who need that specific habitat cannot migrate to a different type of vegetation habitat.

Page 80 **7.3.2 Restoration**.

With the acquisitions already made, such as Sage Hills, there is, as mentioned before opportunities for creation of additional Vernal Pools in Elfin Forest.

Page 116 **Repetitive Fire Risk Assessment**

The issue of impact of wildfire on habitat is of special concern to Elfin Forest. First, we are at high risk of repetitive fire because of the co-mingling of open space and rural homes. Because Elfin Forest is home to several thousand acres of open space, 1,800 of which are already protected, the risk of wildfire is very high in the wildlife/urban interface. Second, the type of habitat most prevalent here (coastal sage scrub and riparian areas around the creeks) is the very habitat identified in the plan as an exception to the rule that "most vegetation communities will be fairly resilient and recover, if not benefit, from fires."

One of the most devastating fires through our community, which is not mentioned in the plan, was the Harmony Grove Fire of 1996, in which well over 100 acres of gnatcatcher-occupied coastal sage scrub was burned . Several wildfires since then stopped at our border because the wind changed. Therefore we beg to differ that for our specific area, "Repeat fires over about 10 acres, especially where vegetation is heavily burned, are unusual and incidents that burn over 100 acres would be an extremely rare event based on fire history data."

It would not be unusual to have a fire, like the 1996 fire, which could burn the core area of coastal sage scrub, especially since the plan notes: "most areas of coastal sage scrub occur in smaller patches, with the largest patch in the PAMA consisting of approximately 2,500 acres (in the Elfin Forest area)." As such the coastal sage scrub habitat remaining in Elfin Forest needs to be protected from all development encroachment, because if it were to burn again, the largest patch of such habitat, and a core area for a large gnatcatcher source population, would be gone.

**Appendix G – Framework Resource Management Plan**

**8 Planning Segments (Section under development)** (p35)

We would strongly suggest restoring this section to the plan itself as it was in previous drafts. Several changes from previous versions are of concern to our community:

- This latest version of the plan does away with the concept of protecting core areas, of which Elfin Forest is one. Previously core area goals and project and preserve design were tied with findings. Project approvals no longer have to link back to Planning Segment criteria through findings. The cumulative impact of multiple projects on a core area (such as Cielo Del Norte, Bridges Unit 7, and others in Elfin Forest) may fragment habitat to the point it would cease to function as a core, and there are no mechanism in place to recognize the impact as such.

- The proposed changes in this section from the previous version of the draft plan reflect a watering down of goals instead of specific "Conservation Objectives". As a planning area we are concerned that the lack of specific percentage conservation objectives will allow for a piecemeal approach which will not take into account the cumulative impact of each development project, and could very easily in our case destroy any opportunity to maintain a viable core population of gnatcatchers which calls Elfin Forest home. For example, the previous language for Elfin Forest read:

  > Conserve at least 75% of the coastal sage scrub in this area to maintain the biological integrity for CSS dependant species, including a core population of California gnatcatcher. In particular, minimize impacts to high and moderate quality coastal sage scrub habitat (as defined in NCCP Guidelines) and maintain uninterrupted patches of coastal sage scrub over 10 acres.

  The new language is much vaguer and lacks specificity:

  > Minimize impacts to the following sensitive habitats: chaparral on mafic soils supporting sensitive plant species, such as Parry's tetracoccus; coastal sage scrub to maintain populations and connectivity of CSS dependant species, including a core population of California gnatcatcher.

  In fact Elfin Forest is one of the very few areas in North County with unfragmented habitat blocks of coastal sage scrub (1,200 acres undisturbed patch as acknowledged in the plan). There is hardly any large acreage segments of gently sloping coastal sage scrub within proximity of the coast left in the County, because the topography makes these very parcels the most desirable for developers. A perfect example is the area known as Bridges Unit 7, which has been the subject of much analysis by biologists such as Dr. Brian Foster. Dr Foster found in his study for the County on Bridges Unit 7 that this area supports a source population of gnatcatchers, and that any further significant habitat loss would endanger the viability of the specie (letter attached for the record).

  Yet under the proposed language, the only goal is to "minimize impact", which by definition is not an objective if it cannot be quantified. This area cannot afford the loss of *any* gnatcatcher habitat. As has been pointed out by others, even the earlier 75%

threshold for habitat loss was too low. But to replace a numerical objective with a vague goal of minimizing impact is to leave the door open for haphazard land use decisions in the face of lack of specificity. Given how dire the situation is for the little remaining coastal sage scrub (only 10.1% of current habitat) and for the gnatcatcher population in North County, very specific objectives reflecting the best available biological opinion should determine the exact amount of habitat that can be destroyed. We would like to suggest that a conservation objective be reinstated, with a numerical value of at least 90%, to read:

> Conserve at least 90% of the coastal sage scrub in this area to maintain the biological integrity for coastal sage scrub-dependant species, including a core population of California gnatcatcher. Maintain uninterrupted patches of coastal sage scrub over 10 acres.

We also recommend restoring the previous strategy (page 315 of Draft Conservation Analysis Volume II) under"**Strategy/Species Specific Conditions.** The following conditions must be met by the North County MSCP in order for the species to be covered:

5. Focus acquisitions, to the extent possible, in the Elfin Forest Core Area."

Without habitat acquisition, the largest remaining patch of coastal sage scrub in North County is doomed to be fragmented by ad hoc projects like Cielo Del Norte, Bridges Unit 7, and others.

**Appendix A – North County Biological Mitigation Ordinance**

**SEC.86.513. EXEMPTIONS**

**c) County Facilities**

Exempting the County and other public entities projects deemed "essential" from the requirements of the MSCP/N seems flies in the face of good planning. Why should the private sector be held to a different, more stringent standard than the entities which represent, and are funded by, the public? If it is good land use policy not to allow development interests to destroy or endanger a particular habitat or specie, what rationale can there exist for that impact to somehow not matter if afflicted by a public entity? Either the policy is sound and should apply to all, or it is not in which case it should apply to none. If anything public entities should be a model and show the way in taking extra effort to respect the rare biodiversity that exist in the County when planning infrastructure or other projects. The public has the right to expect that organizations funded with its tax dollars directly will be the first to respect the law of the land. No exemptions can be allowed for such projects from a policy stand point. One has to wonder why MSCP/S does not have such exemptions, but somehow it is needed in North County?

As stated earlier, the Elfin Forest Harmony Grove communities would like to explore the possibility of a focused Pilot program to fill in remaining gaps necessary for the MSCP preserve assembly, while recognizing the needs of the community.

MSCP, a fifty year old program must be compatible as is stated with the shorter term General Plan update while balancing the needs and the rights of the individuals who live and work in our

community and continue to make Elfin Forest and Harmony Grove such a wonderful environment to live, work, play and conserve. We look forward to the opportunity to work with the County to remedy the issues identified above.

Sincerely,

Melanie Fallon
Chair, Elfin Forest Harmony Grove Town Council

Electronic copy: San Dieguito Planning Group
The Escondido Creek Conservancy
Other interested parties

5 March 2007

Tom Oberbauer
Dept. of Planning and Land Use
San Diego County

Dear Tom Oberbauer,

This letter is in response to the Bridges Units 6 & 7 *Additional California Gnatcatcher Information* (dated 16 January 2007) and *Supplemental California Gnatcatcher Information* (dated 26 February 2007) with map updates supplied by Mr. Barry Jones (dated 22 February 2007) and provided to the Department of Planning and Land Use, County of San Diego, California. I have reviewed the documents in my capacity as an Independent Science Advisor (ISA) and have provided my comments below.

Sincerely,

Brian Foster, PhD

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* claims that neither the ISA Report nor the Staff Report explains what is meant by the ISA Core Area or how the area was selected. The ISA Report did not include the description since the report was made in response to the specific questions posed by the County of San Diego, Department of Planning and Land Use (DPLU) Staff. The report was prepared following a meeting of the concerned parties (see below) in which the Core Area was described. However, the ISA Core Area was delineated well enough for Helix Environmental to produce an accurate depiction of the Core Area as a dashed yellow line on a subsequent Regional Context Map/CAGN Locations (LEN-13 11/28/06).

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* expressed concern about the ISA Core Area. A core area is an arbitrary delineation used to describe a somewhat larger population center as compared to smaller, more isolated so-called stepping-stone populations. A core area should be capable of long term existence and potentially capable of supplying dispersing individuals to other core areas directly or via intervening stepping stone areas.

Mr. Barry Jones of Helix Environmental was present and participated during the meeting of 3 July 2006 in which the area of interest was described. The Study Limits were presented as a red-lined feature on a map titled Regional Context Map/CAGN Locations (LEN-13 6/29/06). The representative of USF&W, County of San Diego staff, and Mr. Jones were the primary participants in the discussion and estimation of gnatcatcher pairs for each of the undeveloped parcels containing potential habitat. Where the parties disagreed on the pair estimate for a parcel, a range of likely pair numbers was established. The Core Area was justified during the meeting by general consensus to include those areas of open space and potential open space. Parcels previously slated for development were largely excluded from consideration since pairs occupying those areas would likely be lost in the near term. For the sake of simplicity, the parcels received a numerical reference designation supplied by Mr. Jones for use on future maps and a simple spreadsheet. The open space or potential open space within the Study Limits extended from the Oaks Properties (designated #1 and #2 on the Regional Context Map/CAGN Locations) in the northwest and roughly to Rancho Cielo (designated #15) in the southeast. Discussion of breaks in the habitat suggested the property west of Rancho Santa Fe Road (designated #1) should be excluded from inclusion in the Core Area due to the level of development in the area and separation by the roadway. In the southeast, the Lindsey (designated #14) property was displayed as not conserved, providing a clear breakpoint in the habitat where ridge-top development in Rancho Cielo (designated #15) connected to Lindsey and functionally cut off additional habitat southeast of the development. Rancho Cielo was last surveyed prior to 1995 and it was guessed that 4-6 pairs might still be present although there was no data to support this. The next nearest southeastern property shown to have had gnatcatchers was Maduro (designated #16), also shown as not conserved open space. In the northern portion of the study limits, the County landfill (designated #7), containing an estimated 1-2 pairs, was included in the Core Area estimate even though the area was shown as not conserved. The reasoning for including this parcel was based on the fact there would eventually be reclamation of the lands and the pairs were persisting on a fringe of habitat that would not likely be lost in

the interim. Another exception was the Perkins parcel (designated #4) which did not have current plans for either development or preservation. This parcel was included in the Core Area population estimate and could have been justifiably excluded from consideration. Data on occupancy of Perkins was not available and the estimate for this parcel came primarily from Mr. Jones. He volunteered to produce a spreadsheet and an updated map with the numerical designations for each parcel with the agreed upon pair estimates.

A newer map, LEN-13 11/28/06, shows several revisions relative to the first map discussed above. First of all, the red-lined Study Limits have been removed and the image now covers much more area, especially to the north, west and east. Removal of the Study Limits coincided with inclusion of The Ridge parcel (designated #26) connected to The Oaks parcel (designated #1) west of Rancho Santa Fe Road. Since the 6/29/06 map did not include this area on the map, let alone include it within the Study Limits, it was not under consideration to be included in the Core Area. The later map also presents the Lindsey property as potential open space, implying slightly better future connection with habitat on Rancho Cielo further southeast. There remains a substantial choke point in the habitat whether or not this parcel is included in the potential open space.

The new LEN-13 11/28/06 map shows apparently novel data which had not been presented in the LEN-13 6/29/06 map. The Rancho Cielo parcel (designated #15) is shown containing seven "consolidated" gnatcatcher locations whereas the LEN-13 6/29/06 map shows only two locations identified in 2000. The initial map included data from the years 1997 through 2006. The Rancho Cielo area was assigned a 4-6 pair estimate in the 3 July meeting, noting that the area was last surveyed sometime prior to 1995. The value of the data for this area is dubious given the age of the observations. After 12 or more years, there is no certainty that the Rancho Cielo parcel currently contains this number of gnatcatchers without additional surveys. As an example of the potential distributional change over time, inspection of the Peng (designated #18) and Quail Ridge (designated #19) parcels in Exhibit 16 shows dramatic differences between data sets. The older data of the Coastal California Gnatcatcher Observations details 14 locations in the northern portion of Quail Ridge, Peng, and to the west of Peng. The more recent presentation of Consolidated California Gnatcatcher Locations data shows only one location in this area and nine in the southern half of Quail Ridge.

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* cites the Multiple Habitat Conservation Program (MHCP) as justification for maintaining a core population of 25 pairs (50 birds). However, the project lies within the planning footprint of the Multiple Species Conservation Program (MSCP) rather than the MHCP footprint. Under the MSCP a population viability analysis (PVA) was provided which used an assemblage of 50-pair (100 birds) core populations as the basis of the analysis. The viability of the individual core populations was not addressed other than the viability of the larger population using several smaller core populations as constituents.

It should be noted that the viability a core population in this usage is roughly equivalent to a source population which is potentially capable of supplying dispersing individuals to outlying fragmented habitat (stepping stones) and/or to other core areas to help maintain the genetic diversity of the population. A core area should be viable in a longer time horizon. The viability of an individual core area is elevated by connectivity with other core populations relative to completely isolated areas. However, the degree to which the viability is elevated is open to some debate due to the limited dispersal characteristics of the gnatcatcher and the extent of habitat fragmentation which limits dispersal. As a rule of thumb, adjacent core areas would need to exchange one or more individuals per generation to preserve optimal genetic variation. The goal is to protect enough members within the core population so as to not introduce genetic bottlenecks which would reduce the viability of the individual cores or the larger population.

The MHCP minimum core population of 25 pairs (50 birds) as cited by the *Bridges Units 6 & 7 Additional California Gnatcatcher Information* is of dubious origin. One cited reference was of Laymon and Halterman (1989) who, in an unpublished and non-refereed Forest Service report, documented a state-wide estimate of 30-33 pairs of yellow-billed cuckoo (*Coccyzus americanus*) in California. This represented a decline of about 80% in the population from an earlier estimate of up to 163 pairs in 1977. The 1987 estimate was 19 pairs in the northern portion of the state and 11-14 pairs in the south. It should be noted that yellow-billed cuckoos are substantially different from gnatcatchers in their size, niche, migration, and reproductive strategy. A goal of a 25 pair minimum probably seemed reasonable for a population whose only two populations within the state had not reached that level. In later work, Laymon (1998) again makes reference to a 25 pair minimum and the origin of this citation is Shaffer (1981). Laymon also notes in reference to the 30-33 pairs, "This is a very small number and the species is obviously critically endangered in the state."

The MHCP also references Shaffer (1981) for the 25 pair minimum. However, it is only as another citation does the claimed 25 pair number originate, as Shaffer correctly cites: "Franklin (1980) has suggested that, simply to maintain short-term fitness (i.e., prevent serious in-breeding and its deleterious effects), the minimum effective population size (in the genetic sense) should be around 50. He further recommended that, to maintain sufficient genetic variability for adaptation to changing environmental conditions, the minimum effective population size should be around 500." Thus, the smallest viable population size as estimated by Franklin was 500 individuals with 50 individuals being the minimum *effective population* needed to maintain only the genetic diversity such as might exist in a captive breeding situation. This has become the 50/500 rule. The minimum *effective population* is specific genetic terminology in which a *census population* of 50 individuals does not equate to a minimum *effective population* of 50 (see below).

These opinions supply only the very roughest of guides without having been tailored to the species or even the class (i.e., Aves) in question. Different species of birds have varying genetic diversity. Some species require many more than 50 individuals in a minimum population depending upon the particular species' genetic variation. To put the

discussion in perspective, Dr. Scott Creel of Montana State University states: "A common rule of thumb in conservation biology (Franklin, 1980) is that a population size of at least 500 is needed to preserve genetic variability, so that the population can respond to future changes in environmental conditions. Recently, Lande (1996) argued that a population size of 5000 is a more realistic target."

Franklin suggests that "inbreeding considerations alone require that population numbers should be not less than fifty individuals. In the long-term, genetic variability will be maintained only if population sizes are an order of magnitude higher." In other words, the absolute minimum for a randomly mating population to prevent inbreeding depression should be 50 individuals. However, 500 individuals would be required to preserve genetic variation to allow the wild population to respond to natural selection pressures. He goes on to explain the *effective population* size (the fraction of the population contributing to the next generation, usually something like 60-85%) as compared to the *census population* size (the total number of individuals in the population). A census is a one-time count of a population whereas an *effective population* must be calculated from repeated census information collected over a decade or more. The reference to 50 individuals is correctly qualified as a minimum *effective population* of 50 individuals. He provides the example of a population that maintains 1,000 individuals in nine of ten years and 50 in one year. The *effective population* size drops from the census size of 1,000 individuals to the equivalent of having just 345 individuals in each of the ten years:

*Effective population* size, $N_e = 10/(1/50 + 9/1000) = 345$

Several authors have documented population declines of 50% or more within gnatcatcher study populations from one year to the next (Atwood, *et al.,* 1998; Erickson & Miner, 1998; Preston, *et a*l., 1998). One population as cited by the MHCP, that on Camp Pendleton in the years 1999 to 2001, was documented experiencing a 77% drop (from 220 to 50) in gnatcatcher pairs (Atwood, *et al*., 2002). What would happen to the *effective population* for a 50-individual census population with a similar decrease (drops to 12) in just one year out of ten? The *effective population* falls from 50 to 38. Two years at 12 and the *effective population* shrinks to just 17 individuals. Effects of this decline would persist even if the population rebounded to 50 for the next eight years. These examples show how the genetic contribution of a population of 50 individuals can be drastically reduced by stochastic or other events which impact the population, even if only briefly. Franklin suggests an *effective population* size of at least 50 for large mammals if there is not regular introduction of new individuals from other populations. Gnatcatchers are not cattle and regular introduction of unrelated individuals into the Core Area is not likely. Reproductive isolation is a matter of degrees from complete isolation to introduction of less than one new and unrelated individual per generation. A population is generally not considered isolated if at least one individual per generation moves between the populations. Young gnatcatchers have been anecdotally documented dispersing up to several kilometers with most documented dispersing less than three kilometers (Bailey & Mock, 1998). There has been no documentation of the frequency of genetic interchange between core populations or even sub-populations. The likelihood of increasing isolation

of core areas through continuing development translates into increased likelihood of varying degrees of genetic isolation.

The short-distance dispersal characteristics (i.e. non-random) of the gnatcatcher further decrease the *effective population* size since the model assumes a random mating system. In random mating, any individual has an equal chance of mating with any other individual each year. For instance, Shaffer was working with grizzly bears (*Ursus arctos*) in Yellowstone, a large mammal with high movement characteristics and nearly random mating patterns. Furthermore, Shaffer's overall conclusion was that a population of 30-70 bears had "less than a 95% chance of surviving even 100 years." This statement can hardly be claimed to be a ringing endorsement for limiting populations to 50 individuals. Keep in mind that grizzly bears also live much longer than gnatcatchers. For this specific Core Area, a gnatcatcher offspring from the western end of the Core Area is probably more likely to mate with another locally produced young than to find and mate with offspring from the opposite extreme of the Core Area. The territories tend to be relatively fixed in position year to year, implying limited re-assortment of either individuals or pairs within the breeding population (Preston, *et a*l., 1998). In order to achieve an *effective population* size of 50 individuals, there would probably have to be something closer to 100, 150, or more individuals. Franklin's suggestion of 500 individuals as the preferred minimum begins to appear more and more reasonable.

It thus appears the passage of Shaffer citing Franklin is the ultimate source of the 25 pair minimum cited in the MHCP document. Again, a minimum *effective population* is only generally suggested as sufficient for immediate short-term genetic fitness, longer-term fitness requires a much larger population. The short-term genetic fitness does not address environmental and other stresses (fire, drought, etc.) to which a population, isolated or not, may have to respond. To again quote Franklin and put the discussion in the proper context, "I have suggested that the evolutionary potential of populations maintained in reasonably effective numbers (that is, in terms of hundreds and not tens of individuals) is not seriously impaired. I think that most quantitative geneticists working with animal populations would come to the same conclusion." This minimum *effective population* number has been often misquoted, taken out of the proper context in which it was used and the MHCP usage was arbitrary and inappropriate.

Giving further weight to the inadequacy of a 25 pair minimum is the Palos Verdes peninsula example. That population varied from 51 pairs to 54, 26, 39, and to 38 pairs over the five year course of study. The authors considered the population to be at "high risk of extinction," partly due to the sudden drop observed in the population and partly because of a low probability of unrelated individuals arriving from distant locations (Atwood, *et al*., 1998). If only 25 pairs are truly sufficient for a minimum viable population and this population had twice that number and at its lowest had 26 pairs, why then would these respected authors consider the population to be at such high risk?

Soule' (1980) offers further consideration to avoiding very small population sizes. He argues that an *effective population* size of 50 individuals loses roughly 25% of its genetic variation over 20-30 years. Loss of half or more of the variation and the population

shows inbreeding effects that rapidly accumulate to reduce fecundity. This allows an estimation to be made of the number of generations to reach the point where there is high probability of extinction. Generally, the number of generations to reach high extinction probability is 1.5 times the *effective population* size. For an *effective population* of 50, there would be about 75 generations until the extinction threshold. Doubling the *effective population* to 100 approximately doubles the generations to 150 before the extinction threshold is achieved. Again, given observed variations in gnatcatcher populations, a *census population* would have to far exceed 100 individuals for many years to achieve an *effective population* of 100.

Shaffer also cited the example of the heath hen (*Tympanuchus cupido cupido*) on Martha's Vineyard with a population that had dropped to just 100 individuals by 1900. Establishment of a refuge in 1907 and predator management led to a rebound to 800 individuals by 1916. A fire that year, followed by additional predation and disease, reduced the population again to 100 by 1920. Extinction of the species had occurred by 1932 (Simon and Geroudet, 1970). This example demonstrates that a population of 100 or even 800 individuals as in this case does not guarantee the continued existence of a given population. Another related example, that of greater prairie chickens (*Tympanuchus cupido*) in an isolated population of 2000 individuals in 1962 dropped to fewer than 50 by 1994. This population had to be genetically rescued by manual translocation of birds from related populations in other states (Westemeier, *et al*., 1998). By these examples it is clear that there is no set minimum number that may be applied uniformly to all species.

The majority of threatened species demonstrate a decrease of genetic diversity, measured as depressed heterozygosity relative to related taxa. The loss of genetic diversity is correlated with elevated extinction risk, reduced reproductive fitness, and reduced evolutionary potential to be combined with the other threatening processes affecting the at risk populations (Spielman, *et al.*, 2004). It is noteworthy that California gnatcatchers are showing signs of reduced genetic diversity relative to related populations by at least one measure (Zink, *et al*., 2000).

The degree of isolation of a population combined with limited population size increases the risk to the population by inbreeding. Brook *et al*. (2002) performed PVA modeling using varying initial population sizes of threatened species both with and without inbreeding depression. They found inbreeding markedly decreased median times to extinction by 28.5, 30.5, and 25% for initial populations of 50, 250, and 1000 individuals, respectively.

Shaffer proposed a tentative definition: "*A minimum viable population for any given species in any given habitat is the smallest isolated population having a 99% chance of remaining extant for 1000 years despite the foreseeable effects of demographic, environmental, and genetic stochasticity, and natural catastrophes*." He goes on to specify that the minimum viable population estimate must be tailored to the specific species in question by the gathering of a wealth of data, a portion of which we now collectively refer to as a PVA. Note that a minimum viable population does not equate to

minimum *effective population*. Given the qualifications Shaffer places on the definition, a minimum viable population would need to be substantially greater than a measured minimum *effective population*.

The minimum viable population for a given core area is not the lowest number ever cited for any species in the literature. At least, a PVA is tailored to the species, combines multiple core populations to provide an overall viability estimate (expressed as a general probability for survival) for the entire population and assumes that several of the core populations may be lost over the modeled period. The predictions cannot legitimately be applied to the smaller core population subsets of the PVA model. The model assumes some of the populations will reach localized extinction and it is the number of iterations (usually1,000-25,000) of the model which are statistically tested to determine the overall likelihood of viability of the population. The PVA model does not have predictive value for the survival of individual core populations. If the model correctly models the population and assuming there are no significant changes in the supporting environment over the time period, a PVA may predict a probability of survival expressed as a percentage. A 95% confidence level suggests the population has a 95% chance of survival over the selected term. However, the actual population could still fall within that 5% chance of extinction even with a perfectly modeled situation.

One recommended minimum viable population for gnatcatchers as suggested in recent literature would be 50-100 pairs (Mock, 2004) or two to four times the stated MHCP minimum. This estimate would be closer to what would be required by a minimum *effective population* and may well be on the low end of what is actually required. The observations of Atwood (2002) would suggest even 220 pairs may be insufficient.

Lehmkuhl (1984) adds further weight, "the actual census, or number of animals in the population, …may be two to three times higher than the effective number. Hence, it is misleading to apply the number 50 broadly, without considering population characteristics." He later emphasizes, "in the absence of major constraints of specific data, MVP [minimum viable population] size should *always* be based on an effective population size of 500." And further, "*Below 500, however, populations must be considered as strictly short term and in danger of extinction without intervention, that is, introduction of new individuals into the population to increase genetic variability, or releasing constraints on the size of the population*." He uses the example of mule deer where an *effective population* of 50 as he calculates requires closer to 368 animals in the census population in the short term. A long-term effective population size of 500 animals was calculated to require a census size of 3,680 animals. He suggests that if a population is dispersed into several core areas, each core should have an *effective population* size of at least 50 animals and the distance between the core areas should be equivalent to or no more than twice the mean dispersal distance. Atwood (*in lit*.) argues the normal gnatcatcher dispersal distance should be considered to be about two kilometers or about one mile. Even at twice that dispersal distance at two miles, the Core Area and the Lake Hodges populations fail in this proximity measure. Thus, genetic connectivity of the Core Area with the nearest large population is much less than ideal to ensure essential frequency of genetic exchange. This would elevate the relative isolation of the Core Area

population, increasing potential inbreeding and resulting loss of heterogeneity, and increasing the likelihood of extinction of the Core Area population in the long term.

In section II A1 of the *Bridges Units 6 & 7 Additional California Gnatcatcher Information*, the argument is made that the ISA Report identified the possibility that destabilization of the Core population could occur but did not specify a probability of extinction. Based on the extinction probabilities presented in Mock (1992), the initial report stated: "an isolated population with 41-50 pairs, the probability of extinction could be somewhat greater at somewhere from 30% to 70%, depending upon a wide host of variables" and "Since there are outlying, though small groups of breeding pairs loosely associated with the Core Area, the viability of the core population would be expected to be elevated as compared to a completely isolated group." These statements were in reference to the general viability of the current Core Area population. Removal of the habitat under Alternative B would lead to the loss of 4 pairs of gnatcatchers, reducing the estimated Core population to 37-46 pairs and further elevating the probability of localized extinction. Assigning a specific probability to the lowered number of pairs is an exercise in futility since the true probabilities would have to be calculated from data which does not exist. The Core Area population estimate was a snapshot-in-time estimate which was arrived at by general group consensus (3 July meeting with USF&W representatives, DPLU staff, and B. Jones) based on a paucity of data of widely varying age for most of the parcels. The pair estimates for several of the parcels are subject to question because the data was compiled from numerous surveys of parcels with varying qualities of surveys, frequencies, and observers. The PVA modeling has not been exhaustively tested, or at all for that matter, for populations below 50 pairs. To quote Dr. Jonathan Atwood in his letter of 6 August to DPLU, "At this stage in our knowledge of gnatcatcher population dynamics and habitat requirements, any credible scientist would consider the results of either a formal PVA, or an assessment of what broader impacts a particular local project might have, as little more than educated guesswork."

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* cites the MHCP description of an "interconnected reserve system" connecting the Project Site to the Carlsbad Core 7 of the La Costa development.

The MHCP states on page 2-12 that: "Few habitat patches in the study area are large enough and contiguous enough to be considered reliable core breeding areas for gnatcatchers." In other words within the MHCP area, the Core Area was probably the only location where even 25 pairs could be preserved. The 25 pair estimate was probably used more as a mitigation/preservation goal than as an attempt to set a theoretical limit. And later: "Due the small size of most other sage scrub patches in the study area, and their relative isolation from one another, most coastal sage scrub habitat in the study area is considered "stepping-stone" linkage habitat for gnatcatchers." The MHCP Core Area is therefore only very distantly and tenuously connected to the relatively large Camp Pendleton population. Genetic input from stepping stone populations would be expected to be minimal whereas there is more likely input to the stepping stone populations from the core areas. As the Core Area has been squeezed by development, the remaining population is currently under stress and not likely to provide source individuals to the

stepping stone areas in the near term. The connection of the Core Area with the Lake Hodges population is better, although there are serious distance and habitat fragmentation issues limiting gnatcatcher connectivity.

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* includes as an appendix (Appendix 15) a series of graphs of slope for categories of 15-acre use areas in the Core Area and for the Lake Hodges core area. The attempt appears to compare gnatcatcher slope preference by arbitrarily assigning a 15-acre use area to an undefined subset of the "consolidated gnatcatcher locations" within the Core Area and attempting to analyze the slope distributions of these patches. The categories of slope chosen appear to be overly broad since only 0-20, 20-40, and >40 percent slope categories were smallest of the intervals chosen. The analysis did not depict for comparison the slopes found on the project area or test these slopes against the remainder of the Core Area points. The subset of areas chosen for the analysis does not appear to be all inclusive, nor do they appear entirely justifiable. Unfortunately, this slope analysis attempt was done on a relic population following extensive development. Had the analysis been done on the entire population distribution prior to the developments it may have added something to the discussion. Inspection of Coastal California Gnatcatcher Observation data points visible in Exhibit 10 reveals numerous points of relatively high density distributed among what are now housing developments. These developed areas probably contained many other low slope and high value habitats now lost. Unfortunately, there is little explanation provided for the graphs, no justification for the apparent comparisons, and little comment on the potential conclusions. Slope is only one of several known and probably many more unknown factors that define gnatcatcher habitat. Any analysis of the current Core Area has to take into account the fact that development has dramatically altered the habitat availability in and around the Core Area, potentially altering the gnatcatcher distribution. The current slope analysis, as presented, is without value.

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* Exhibit 10 demonstrates a visual misrepresentation of the dispersal argument. The dispersal radii (one and two mile circles in yellow and blue, respectively) are shown over red-lined so-called high density gnatcatcher areas. The northwestern-most radii are not centered over the two red-lined areas (identified later as areas A and B) as they should have been, implying higher likelihood of dispersal to neighboring areas. At best the circles should have been displayed centered over both red-lined areas together due to their close proximity or shown separately. The map also shows radii centered over Area C which has no red-lined area, unconfirmed pair estimates/densities and therefore no relevance. The inclusion of the radii for Area C is inappropriate and gives the illusion of greater connectivity between the so-called high density gnatcatcher areas. Likewise, Area E is shown as a red-lined area implying some level of permanence for this area. No previous map has shown this area to be open space or potential open space and these sites and these resident pairs will probably not be conserved. Thus, the Area E circles and red-lining are inappropriate. Also, the 13 pair estimate for Area E shown in Exhibit 10 is greater than the 9-11 pairs agreed upon in the original meeting. Area F has radii again displayed off-center to the southeast from the red-lines, implying better dispersal connection to southern and eastern populations. The data for Area F appears to come

from pre-1995 since the original LEN-13 6/29/06 map shows only two gnatcatcher observations. Inclusion of such out-dated data to measure current density and dispersal potential is inappropriate as the locations cannot be substantiated and likely do not reflect the current occupancy.

Shaffer (1981) prophetically states, "…there is apparently no clear relationship, either theoretical or empirical, between the percent of occupied patches of a certain size and the potential longevity of the populations they support." He later adds that species are not evenly distributed throughout their range due to variation in habitat quality. "Two habitat patches of the same size may not support equally large or enduring populations. Such habitat differences are critical to wise conservation planning, and any research efforts employing this approach must recognize and deal with this fact." As an example, Weaver (1998) presented five broad classification categories of coastal sage scrub and related the distribution of gnatcatchers to these variations. Another telling example is the Palos Verdes population in which gnatcatchers only occupied about half of the available quality habitat. Some of the unoccupied habitat had fragmentation issues (Atwood, *et al*., 1998). Inspection of recent aerial photographs of the core area revealed numerous trails, dirt roads, and recently graded areas within the core that degrade other Core Area habitat values to varying degrees.

In lieu of the above, the *Bridges Units 6 & 7 Additional California Gnatcatcher Information* assertion that 1,433 acres of coastal sage scrub "will support at least 57 pairs of gnatcatchers" at 25 acres per pair is questioned. The *Additional California Gnatcatcher Information* goes beyond this estimate to include 293 acres of coastal sage scrub with slopes over 40% to argue for elevating of the capacity of the core area to 70 pairs. The assumption that all habitat is equally capable of supporting uniform numbers of gnatcatchers is naïve.

If the core area could support 57-70 pairs as claimed and it currently only supports 41-50 pairs, why are there apparently so many fewer pairs than these proposed theoretical maxima? Given the development of surrounding habitat which in the past supported many more pairs (visible in Exhibits 10 and 11 as Coastal Gnatcatcher Observations), one would expect the displaced members of the population would have been pressed into the remaining core habitat with the resultant population at or near saturation levels. Documentation of population movement following loss of habitat from fire (Atwood, *et al*., 1998) showed the relocation of the displaced birds into nearby unburned refugia. Unfortunately, the population increases in the refugia were transitory and returned to pre-fire levels within two years. This observation would be expected if the habitat were near or at full occupancy and the displaced individuals would have occupied unclaimed and otherwise unsuitable habitat. The refugees likely suffered higher mortality. Much more detailed, repeated, and consistent surveys are needed to determined whether the remaining Core Area population is in decline, stable or in recovery. The roughly empirical estimate of 41-50 pairs within the Core Area is probably the best available estimate for the carrying capacity of those 1,433 acres plus the other 293 acres as this is the current best estimate of gnatcatcher abundance for the area. It is expected that the gnatcatcher population will fluctuate. There are likely to be a few areas in the Core Area

that are currently unoccupied and could support additional pairs. Unfortunately, we cannot know or predict what those areas may be. Should a substantial core area population increase be documented, then the carrying capacity could be revised upward. While 70 pairs may be a theoretical maximum carrying capacity, the somewhat more empirically derived 41-50 pair estimate is the more conservative and probably more realistic estimate for the Core Area. Since the population of the Core Area is at or below 50 pairs, the overall viability of the population is not assured. Although the core area population may currently be minimally viable, at least in the short term, there is serious doubt about the sustainability of a population further reduced, especially in the longer term.

One method currently available to determine the overall value of a particular portion of habitat to a species is to compare the relative density in pairs per acre. The estimated gnatcatcher pair densities of the various parcels were calculated by DPLU and used to assess the relative habitat values of the parcels. Under ideal conditions, a regular grid would be placed over a chosen habitat and the species density displayed as a measure of abundance measured by the grid. Because the Core Area population was estimated by parcel, the regular grid method cannot be applied. The result of this simple method was presented as a density map, expressed in gnatcatcher pair density per parcel. Using the lower end pair estimates, the highest density parcel is the Lindsey parcel (#14), which is very small and has an estimated 2 pairs, followed closely by the Bridges parcel (#10). The next most valued parcel is Chumas-Pappas (#11). Using the higher end pair estimates, the highest density parcel is Peng (#18) followed by Lindsey (#14) and followed by Bridges (#10). Note that the pair estimate for Peng was 3-5 and there were none of the aggregate points, i.e. no recent data, within the parcel (See LEN-13 11/28/06).

The *Bridges Units 6 & 7 Additional California Gnatcatcher Information* presents in Section II E. a claim that does not appear to be supported. In subsection 11, the claim is made: "Survey data of five patches within and abutting the ISA Core Area, totaling 938 acres, support gnatcatchers at densities between 16.03 and 20.14 acres per pair." Density should be expressed as animals per unit of area, the supplied information appears to display 1/density in acres per pair. This presentation gives an incorrect impression of territory sizes implied from data that do not exist. Consider for example two equally-sized parcels of 10 acres with 2 pairs on each. One parcel is discrete with no habitat surrounding it and the second is completely surrounded by suitable habitat. In the case of the former, the rough estimate of territory size could be fairly accurately guessed as less than or equal to 5 acres per pair. However, in the case of the latter parcel, the two pairs could have dramatically larger territories extending well into the surrounding habitat and the similar rough estimate would be far off from the actual territory occupation.

Further, Area E was presented as having 13 pairs with a claimed density of 18.96, assumed in acres per pair. Inclusion of this area as one of the red-lined areas implies Area E may have some permanence where it does not. Note that the pair estimate for this area was 9-11 in the July 2006 meeting. Multiplying 13 pairs by 18.96 yields a total of 246.48 acres. The acreage of the parcels within the Area E is 315 combined acres and the

red-lined area appears to be slightly larger. Division of 315 by 13 yields 24 acres. How was the estimate of 18.96, an apparent difference of at least 21%, derived? There is not enough description of the methodology to check the accuracy of the numbers presented. If the acreage has not merely been divided by the estimated pairs, then how was the claimed density determined?

A larger question is whether the technique applied is even appropriate. Subjective drawing of the red-lined areas is questioned. Further, the so-called areas of gnatcatcher densities were not clearly defined nor was the technique described as to how the density areas were determined. The various parcels in the Core Area were estimated to contain specific estimates of gnatcatcher pairs. These estimates corresponded to gnatcatcher observations in some cases and not in others. Mr. Jones claims in his 23 February letter to DPLU to have "used the range of gnatcatcher pairs agreed to by the County in July 2006." Clearly, this was not the case in all areas.

Detailed maps of the areas A-F (dated 2/22/2007) contain pair estimates and claimed densities for each area with the exception of area C which was excluded due to insufficient data. Each reported density was multiplied by the estimated pairs and the result totaled. The result was 982.75 acres for the combined areas of A, B, D, E, and F rather than the claimed 938 acres. Some of the areas included pair estimates which differed from the estimates made at the 3 July 2006 meeting. Area A with what are claimed to be eight pairs was not included in the original considerations since it was outside of the Study Limits boundary and is thus the estimate of just one opinion. Area B was estimated to have 4-6 pairs and only the higher estimate was used. Also, Area B appears to have been enlarged relative to the original discussion (probably to include two more points beyond the Study Limits). Area E is shown as having 13 pairs whereas the 3 July estimate was 9-11 pairs (Peng at 3-5, Quail Ridge at 6). Area F is shown as having 9 pairs whereas the 3 July estimate was 6-8 pairs (Lindsey with 2 pairs and Rancho Cielo with 4-6). While these differences are small, they are additive and notably greater than previous estimates.

Exhibit 16, described as showing that there is enough habitat to support 47 pairs of gnatcatchers in the vicinity of the project area, seems to have been markedly enhanced from previous estimates of open space and potential open space. For example, the Perkins parcel (designated #4) is shown as Anticipated Conservation/Public Lands whereas previous discussions only described an absence of current development plans and did not label the area as potential open space as shown in Regional Context Map/CAGN Locations (LEN-13 11/28/06). Likewise, the Ginger Perkins parcel (designated #20) was also uncertain as to its ultimate fate. The Lindsey parcel (designated #14) is shown as conserved at some level whereas it was not shown as conserved in the 6/29/06 mapping. In light of these potential discrepancies, this claim is questioned.

In conclusion, the current composition of the Core Area supports at best estimate approximately 41-50 pairs of gnatcatchers which is probably a viable population in the short term and minimally viable in the long term if there is sufficient genetic interchange

with nearby population(s). The claim that only 25 pairs (50 individuals) are necessary for a sustainable population is without support and the result of misquotes and misuse of scientific genetic estimations. The use of the term minimum viable population for populations below an *effective population* of 500 individuals is inappropriate. The *census population* does not equate to the genetically determined *effective population* which must be calculated from repeated census data over time. This population likely falls below the minimum *effective population* estimates and should, therefore, be considered at least in danger of extirpation in the long term. The current Core Area is already fragmented being the result of previous developments that eliminated most of the low slope areas, reducing and stressing the remaining population. Development of a parcel, such as Bridges, shown by gnatcatcher occupancy to be highly valued is not advised and places the Core Area population in further danger.

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April 6, 2009

County of San Diego
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Dear Members of the MSCP Discussion:

Thank you for this opportunity to comment of the Multiple Species Conservation Program Draft North County Plan. We appreciate the dialogue that has taken place over the past several years on this program and the inclusion of previous Farm Bureau comments in this draft.

The following are our comments for your consideration:

4.5.1 Agricultural Clearing

Since the withdrawal of the agricultural exemption for clearing by the County in 2001 there has been no appreciable creation of new farmland due to the fact that crop production values are almost always insufficient to overcome the burden of mitigation. The farm community is looking forward to expansion that will become possible through the exemption from mitigation requirements and the possibility for even further expansion through the proposed rough step process. We do have a concern with the exemption cap that has been set at 3000 acres.

It is our suggestion that the exempt acreage for agricultural clearing of Tier II and Tier III habitats be set at 4500 acres followed by the rough step calculation. In the scale of the Multiple Species Conservation Program this increase is not significant and the loss of potential mitigation acreage would be raised by a small increment. In fact, we would suggest the analysis in this section of the loss of potential mitigation acreage due to agricultural clearing is incorrect. The assumption cannot be made that if the acreage exemption did not exist a like acreage would be fully mitigated as new farmland or through development. Therefore, it is our belief that the loss of potential mitigation is likely minimal.

It is also our suggestion that an amount of acreage that is put into agricultural production through the exemption process and at some later date is fully mitigated through removal of the conservation easement be returned to the inventory of acreage available for exemption.

7.5.2 Agricultural Policies

In this section it is stated that the Incidental Take of covered endangered and threatened species will not be given for the use of pesticides or herbicides. The California Department of Pesticide Regulation has clear and strict regulations on the use of pesticides and herbicides. Following those regulations is a normal agricultural procedure and considered to be a Best Management Practice. If a farmer is using a pesticide or herbicide in full compliance with the label requirements we believe coverage should be granted. Only when there is a failure to use a pesticide or herbicide in compliance with the label requirements should there be a loss of coverage.

Table 7-6 Agricultural Best Management Practices – Weed Control

We suggest re-wording of this BMP, which also appears in the Arroyo Toad section, to read "Use broad-spectrum herbicides only when a targeted herbicide is not effective or available." We make this suggestion for two reasons. First, weeds can be or become resistant to a targeted herbicide. In those cases the best remedy may be the application of a broad-spectrum herbicide to knock down the targeted weed population. Second, in some cases, particularly with introduced or exotic weed species, there may not be a selective herbicide choice.

Table 7-6 Agricultural Best Management Practices – Pest Control

For similar reasons to those stated above for weed control, we suggest this BMP be amended to read "Use broad-spectrum pesticides only when a targeted pesticide is not effective or available."

Table 7-6 Agricultural Best Management Practices – Specific Activities within Suitable Habitat for Arroyo Toad

One of the BMP's states "Treat stormwater runoff from fields to reduce pesticides and fertilizers, prior to it flowing into streams or rivers occupied by Arroyo Toads." This is not achievable. "Treat stormwater runoff" implies that all of the waters must be run through some form of process. That is neither practical nor possible. We suggest a simple edit to replace "Treat" with "Manage." This will allow the farm operator access to a variety of techniques best suited for a particular location while maintaining the intent of the BMP.

Should you need any clarification on these comments, please feel free to contact us at your convenience.

Sincerely,

Eric Larson
Executive Director

# California Native Plant Society

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April 6, 2009

**RE: Draft North County MSCP**

Dear Dr. Underwood and Mr. Oberbauer:

The California Native Plant Society (CNPS) is a statewide non-profit organization of amateurs and professionals with a common interest in preserving California's native plants. CNPS seeks to increase understanding of California's native flora and to preserve our rich botanical resources for future generations.

We appreciate that the draft MSCP North County Plan provides a scientifically based framework for acquisition, monitoring, and management of the preserve and discusses sources of funding. The goal of this plan is to create a connected habitat to provide for the continued robust existence of the plants and animals living in unique San Diego ecosystems. We would like to point out some areas where the plan could be improved in order to ensure that these goals are met.

1. Unforeseen Circumstances/ Changed Circumstances. We would like the plan to take into consideration other "changed circumstances" that may negatively affect the plan. For example, take by state or federal government using eminent domain, such as occurred along the U.S. Mexican border, impacted the conservation of rare plants along the border. **Which areas in the draft North County plan could be affected by military, security, transportation, or utility projects**? How would such Changed Circumstances be reconciled in the Plan?

Climate change appears to be coupled with an increase in large-scale fire. We have seen impacts to habitat after the 2003 and 2007 fires. The Plan allows for "up to two years" additional monitoring after such events. Based on what we know from the earlier fires, this time frame is too short a time in which to observe, measure, create adaptive management plans, and determine their efficacy. Indeed, the draft Plan, appears to allow what we believe to be foreseeable circumstances to become Unforeseen Circumstances with no remedy.

2. Illegal grading and disturbance. CNPS would like to see insertion of a "fix-it" clause in the MSCP plan. Specifically, if habitat is illegally damaged before a take permit is granted, that there be a requirement to restore the site back to its pre-damaged condition (including functioning hydrology), according to the standards of State and Federal agencies, before the permit gets issued.

The reason for inserting this clause is that it appears that the County is responsible for finding funding for all restoration within the MSCP, regardless of what caused the degradation**. Because of this responsibility, and because degraded habitat requires less mitigation than high-quality habitat, there is a perverse incentive for land owners to grade or otherwise damage sites prior to seeking permission to develop**

**those sites. CNPS would like to see this loophole closed,** so that there is no incentive for illegal action.

Alternatively, illegally damaged land could be mitigated for based on the habitat present before the illegal damage plus a fine to compensate the County for enforcement actions.

3. Brush Management. We strongly advise eliminating the use of the term "clearance" or "clear" with respect to brush management activities that are not intended to result in the complete elimination of vegetation (Sections 4.5.2, 4.5.3 and 8.5.1, among others).

"Brush management" means that vegetation is selectively managed within the defensible space around a structure. However, our experience with brush management activities in the City of San Diego indicates that it is extremely difficult for staff to economically combine selective brush management with the goals of the MSCP Preserve. Furthermore, CA DFG has issued an opinion (Feb 14, 2007 letter from Larry Eng, Regional Manager) that brush management is not an "impact neutral" activity, as had been assumed during development of the City of San Diego MSCP. **Therefore, we request that brush management zones for existing or future development not be considered to contribute to the habitat Preserve area and that they not overlap the Preserve and that no exemptions be allowed for brush management areas.**

Table 7-7. The State of California recently passed new laws that govern the creation and maintenance of defensible space. PRC 4291 and others should be consulted before finalizing table 7-7 and other directives with respect to fuels management. CalFire and others recognize that burning embers contribute to structure loss, and these can easily jump any cleared area, given sufficient wind. Many of these embers come from exotic invasive species in the landscape, rather than native vegetation. Prevention of embers includes the husbandry of all trees and shrubs and other combustible material in defensible space.

4. Fire Frequency. In section 8.5.1 the damage from repetitive fire is discussed only for wetlands and coastal sage scrub. Since science is not yet sufficient to determine the effect of repetitive fire on different habitats, we recommend replacing the definition of repetitive fire from a particular frequency to a descriptive definition (e.g, "frequency that results in type conversion to a lower quality vegetation type") and to include the possible effect of altered fire frequency on all vegetation types such as chaparral and forest.

5. Vegetation definitions. Section 3.2.2. The plan states that the Holland (1986) and Oberbauer system (2005) vegetation classification systems will be used. Since the Plan covers a term of 50 years and the best current vegetation science advances and changesjust as any other field does, we recommend that the plan take into account that updated vegetation classification systems may develop. Considering that the State and Federal agencies have both adopted evolving standards for vegetation classification, we urge that the MSCP vegetation descriptions be linked to those used by state and federal agencies, so that the science will remain current. The Plan laudably does this with species taxonomy and status, and it should do it with vegetation science as well.

6. Funding. We appreciate that potential funding sources have been identified (largely TransNet) especially for stewardship and adaptive management, but the Plan does not show a timeline where acquisition, management, monitoring, reporting, and funding are coincident.

**We recommend that the Plan include a mechanism to assure that sufficient funding is coincident with approvals for projects**--something akin to the "Rough Proportionality" test that balances take and acquisitions. There are a number of ways of doing this without burdening specific projects: e.g., setting up assessment districts and advances by the County (or others) with reimbursement (plus interest) from future permitees. The Plan should be specific as to how money will be provided for key activities and what will happen in the absence of funding.

If funding lags development, take by agricultural interests or take in vegetation and brush management, it is not clear how to determine whether the goals of the Plan are threatened or not. What is the plan for monitoring the activities or reporting on their potential impact to the plan or the resources covered by the plan? Therefore, it is imperative to fund monitoring, reporting and adaptive management at the outset.

Table 5-3 allocates all Adaptive Management responsibility to land owned by public agencies. We are concerned that the majority of the preserve remains in private hands (according the Table 5-3), and yet there are no funds for management and monitoring, effectively allowing these lands to lose their value as habitat. If the Public is willing to fund activity on private lands, what rights does the public have for access and work? As we read the Plan, absent a Conservation Easement, the public has no such rights over private lands. And absent funding, even if such rights existed, who would pay?

Table 5-4 appears to have a typo in the footnotes. It shows Stewardship at $50/acre and Adaptive Management at $100/acre. Earlier charts (Table 5-3) reverse the sums.

**What process was used to determine the figure for Stewardship and Adaptive Management?** It is unclear whether $50/acre is enough to pay for Contingency, Adaptive Management, Monitoring and Reporting and Administration. In a variety of HCP's we have previously reviewed, Contingency is set at about 10% of Stewardship plus Monitoring and Reporting. Administration is about 20% of that sum, and Adaptive Management anywhere from 10% to 25% of the sum depending on the nature of the habitat and the "Changed Circumstances".

While we appreciate the County's ongoing funding of MSCP and its activities, there is no assurance such funding will be available in the future--or in amounts required to meet the minimum activities outlined by CDFG for compliance. Therefore, we believe that additional funding is required for Adaptive Management/Monitoring and Reporting/Contingency and Administration, and its source needs to be more rigorously identified.

This inadequacy, coupled with the lack of a mechanism to assure stewardship and adaptive management funding commensurate with acquisition and development goes to the very heart of our concerns for the Plan. Without commensurate funding of the Plan it will allow land development and loss of species and habitats in exchange for inadequate management of the preserve areas.

7. Vernal Pools. The text points out the historically futile conservation efforts expended in protection of vernal pools**. We recommend that the Plan set forth a hard number of acres of functioning vernal pools, the number for which cannot decline over the life of the Plan, or the consequence is cessation in development permits**.

Section 7.3.2. 1:1 mitigation for vernal pool take is low for an exceedingly rare wetland. Are we misreading the Plan? If not, please provide reasoning for this low mitigation ratio.

The draft does not provide specific success criteria for vernal pool protection or restoration--including a realistic timeline for monitoring and management to assure success. Given the lengthy discussion under Unforeseen Circumstances on fire, drought and climate change, we can anticipate irregularity. Therefore, the traditional 5-year success monitoring and management periods should be lengthened.

In downtown Ramona, we recommend the County immediately establish a vernal pool mitigation bank, lands acquired and adequate funding obtained for restoration, monitoring, management and reporting. Project applicants could thereafter reimburse the County as they pull permits.

8. Conservation Easements - Section 5.3 (and others). The current County Conservation Easement applies generally to private lands, but not to public entities. The document is often no more than a temporary declaration of Open Space zoning, easily overturned by a request for vacation. CDFG, ACOE, and USFWS have developed very good conservation easement forms in cooperation with large landowners and nonprofit stewards of conservation lands. Could the County evaluate these forms and their use for the Plan?

There does not appear to be a mechanism to assure agricultural compliance with Conservation Easements or the requirement that activities maintain conservation and linkages. Are grants of Conservation Easements or similar conservation means supported by an endowment intended to pay for monitoring and reporting? Do the easements contain effective remedies for non-compliance?

**We would appreciate the creation of an on-line GIS database of public and private preserve land and conservation easements and compliance requirements so that the public can effectively monitor the status of the easements.**

Thank you for the opportunity to make comments on this draft plan.

Sincerely,

Carrie Schneider, Conservation Chair
San Diego Chapter of the California Native Plant Society
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**Wohlford Ranch Management**
**P.O. Box 5005 #17**
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April 2, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd.
Suite B
San Diego, California 92123

RE: MULTIPLE SPECIES CONSERVATION PROGRAM NORTH COUNTY
DRAFT COMMENT LETTER

Assessor Parcel Number 190-080-20

As the owner of San Diego County Assessor Parcel number 190-080-20, I am writing to request that the proposed Pre-Approved Mitigation Area (PAMA) and Core Area designations be removed from my property due to the fact that the analysis contained in the proposed MSCP is inconclusive in determining the extent to which the designation should be applied.

This property is located within the Sphere of Influence of the City of Escondido and should be considered in conjunction with the City of Escondido's habitat planning efforts. The proposed designation prejudices the City's ability to plan for other portions of our ownership that are immediately adjacent, within the boundaries of the City of Escondido.

The MHCP needs to incorporate language allowing ownerships split by jurisdictional boundaries to be jointly studied and planned in conjunction with other parcels under the same ownership. The premature designation of my parcel located in the unincorporated area has the potential to negatively impact the decision making process on other portions of our ownership within the boundaries of the City of Escondido.

In addition, the majority of the property has been in agricultural production as a part of the Wohlford Family agricultural business for over 70 years. It not only contains fruit producing trees, but also has been improved with agricultural access roads and irrigation lines.

Further, the site is surrounded by properties that are actively seeking annexation to the City of Escondido for purposes of development. The City's proposed shooting range is located immediately adjacent to the north on the east side of Valley Center Road.

All of the factors listed above lead me to question the validity of designating the property as Pre Approved Mitigation Area.

The ideal time to determine the limits of the area to be set aside as mitigation, or core area, is in conjunction with a planning to develop the site. The PRE-APPROVED designation appears to prejudice the ability to obtain approval of a biologically viable design in conjunction with my rights to develop the property in an economically viable manner.

At the time of planning for development it would be possible to utilize clustering concepts and obtain relief from grading restrictions related to slope classifications as examples of methods of achieving an economically viable and feasible use of the property while preserving ACTUAL documented habitat and ACTUAL species found on the site.

Encumbering the property on the basis of the generic information contained in the MSCP appears to diminish the viability of future development by possibly prematurely restricting the potential residential unit yield on the site, something that would definitely diminish the value of the site.

As I understand the Board of Supervisor's policy action, the County will not condemn properties to achieve the goals of the MSCP. Proceeding with the designation of the property as a Pre Approved Mitigation Areas with a Core Area designation could necessitate the actions that the board has gone on record as opposing.

It is my understanding that none of the MSCP designations necessarily preclude development of my property. However, the proposed designations will have a material effect on the value of the property by clearly defining it as targeted for mitigation for development of properties over which I have no control and for which I receive no benefit.

Again, I reiterate my opposition to the designations as proposed in the distribution draft of the North County MSCP.

Very truly yours,

Burnet B. Wohlford
Wohlford Trust

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JIMMY AYALA, AICP
Director
Community Development

April 3, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

RE: Draft North County Multiple Species Conservation Program (MSCP) comments

Dear Dr. Jared Underwood:

Pardee Homes would like to offer the following comments on the Draft North County MSCP.

The hardline description in Appendix E for Meadowood is generally accurate, and we thank you and the wildlife agencies for working with us toward a mutually agreeable development area. Minor adjustments are anticipated as the project is refined during the remainder of the entitlement process, and through final engineering.

We note that Section 4.2 of the Draft North County MSCP allows adjustments to the development footprint per the process described in Section 8.6.2. The process described in Section 8.6.2 is clear and very similar to that followed in other jurisdictions.

We would ask that this amendment process also be referenced in SEC.86.513. Exemptions (d) of the Biological Mitigation Ordinance. Sub-section (d) states: *"Any Pre-Negotiated (Hardlined)* ***Take Authorized Area*** *shown on Attachment A. Direct project impacts must occur within the Take Authorized area shown on Attachment A and to the extent described in the Plan, Appendix E."*

The specific language used in Sub-section (d) might be interpreted as not being amenable to minor preserve boundary adjustments that have been approved via the amendment process set forth in Section 8.6.2 of the North County MSCP and that have no effect on the function of the preserve.

As such, we would recommend SEC.86.513. Exemptions (d) be modified to read as follows:

> "Any Pre-Negotiated (Hardlined) **Take Authorized Area** shown on Attachment A. Direct project impacts must occur within the Take Authorized area shown on Attachment A and to the extent described in the Plan, Appendix E or as amended per Section 8.6.2 of the North County MSCP Plan."

We would also note that Pardee anticipates that a Section 7 Biological Opinion allowing development within the hardline area should be forthcoming shortly. That permit action was begun long ago and is consistent with this Draft North County MSCP. We anticipate that development will proceed in accordance with the Draft North County MSCP and the anticipated Biological Opinion.

Thank you for the opportunity to provide comments. Please keep us informed of the progress of this program.

Sincerely,

Jimmy Ayala, AICP
Director
Community Development

ACCRETIVE

April 6, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Road, Suite B
San Diego, CA 92123

**RE: COMMENTS ON THE DRAFT MSCP NORTH COUNTY PLAN**

Dear MSCP Division Staff:

Thank you for the opportunity to review and comment on the draft MSCP North County Plan (hereafter "Plan"). Accretive Investments, Inc. owns property within the Plan area and has several concerns regarding the draft Plan and preserve design, which are discussed in greater detail in the comments that follow.

1. The design of the Pre-Approved Mitigation Area (PAMA) is inconsistent with SB 375 and AB 32. California Senate Bill 375 (SB 375) implements a framework to reduce harmful greenhouse gas emissions through better land use planning. The purpose of SB 375 is to promote development patterns that reduce greenhouse gas emissions by reducing urban sprawl and focusing development into transportation and transit corridors, thereby increasing housing choices and alternative transportation options while reducing commute distances and congestion. SB 375 is an implementation tool that is being used to achieve several of the greenhouse gas reduction goals established in the California Global Warming Solutions Act of 2006 (AB 32).

   As depicted on draft Plan Figure 2-1, *Preserve Planning Map*, the Plan places key regional and local transportation corridors – including Interstate 15 (I-15) – within the PAMA. Although development is not prohibited within the PAMA, the increased mitigation and site design requirements placed upon properties within the PAMA creates a strong disincentive for developers to concentrate development along these key transportation corridors so as to discourage sprawl and reduce greenhouse gas emissions.

   By providing strong disincentives for development within key regional and local transportation corridors, the draft Plan effectively precludes implementation of key aspects of SB 375 within the North County area by promoting the existing pattern of sprawling development and resulting in increased harmful greenhouse gas emissions. The inherent disincentive for development along key regional and local transit corridors is inconsistent with the goals and provisions of SB 375 and AB 32.

2. The design of the PAMA along the I-15 Corridor provides limited habitat benefit at the expense of "smart growth." The draft Plan designates virtually the entire I-15 Corridor as a PAMA linkage between planned preserved areas located east and west of I-15. According to the draft Plan, the PAMA is described as having a high composite habitat value and/or a critical core and linkage. However, including the entire I-15 Corridor within the PAMA seems to conflict with this definition, as I-15 presents many constraints and edge effects that degrade the quality of the habitat and/or linkage in areas immediately adjacent to the freeway. Furthermore, there are several locations where the PAMA linkage along the I-15 Corridor contains natural vegetation groupings less than 400 feet in width, which is well below the typical width recommended for regional habitat linkages. A "stepping stone" linkage may be more appropriate along portions of the I-15 Corridor to provide for wildlife movement, while still allowing for "smart growth" development as required pursuant to SB 375 (refer to discussion under Item 1, above).

for wildlife movement, while still allowing for "smart growth" development as required pursuant to SB 375 (refer to discussion under Item 1, above).

3. The Draft North County Plan would impede implementation of the pending County of San Diego General Plan Update within the Valley Center Community. The County is anticipating a good deal of population growth to occur in the Valley Center community in the upcoming decades. To accommodate this growth, the pending General Plan Update land use plan for the Valley Center community designates portions of the community for increased density. One of these areas of increased density occurs along the planned alignment of New Road 3. As depicted on draft Plan Figure 2-6, *Circulation Element Road and Important Wildlife Crossings*, the Plan places a majority of the planned alignment of New Road 3 and the immediately adjacent property within the PAMA. The increased mitigation and site design requirements within the PAMA limits the development potential of land within the PAMA and may result in property owners being unable to maximize the development potential of their property, as granted by right by the General Plan and Zoning Ordinance. In relation to New Road 3 within the Valley Center community, these limits may prevent properties from maximizing their development potential and may adversely affect private land owners' ability to fund the construction of this planned roadway. This would hinder the implementation of the County's vision for the Valley Center Community.

In conclusion, Accretive Investments, Inc. is concerned that the draft Plan is inconsistent with the mandates of SB 375 and AB 32 and would hinder the implementation of the General Plan Update in the Valley Center community. We look forward to the County's refinements of the draft Plan and we would appreciate being notified any opportunities to review subsequent drafts of the Plan.

Sincerely,

Dawn Hearst for

Jon D. Rilling
Vice President

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RE: Comments on San Diego County North County MSCP

The Pala Band of Mission Indians ("PBMI") appreciates the ability to provide comments on the County's Draft North County Plan ("Plan"), as part of the County's Multiple Species Conservation Plan ("MSCP"). We believe that the concept and goals of the MSCP program toward conservation of significant habitats and natural resources in the County is a laudable direction for the County; however, the current draft of the Plan includes inconsistencies, incomplete information, and a lack of consideration of Tribal rights and interests within the County. In the spirit of intergovernmental cooperation and communication, we provide the following comments regarding the North County Plan for the County's inclusion in its next draft of the Plan.

**Tribal perspective on the need for the MSCP**

It is important that the County understand the PBMI's perspective regarding the MSCP in general. This perspective was previously provided to the County in 2005, in PBMI's comments regarding the inception of the North County Plan.

> "The MSCP preserve boundary is an excellent recent example of the effect of the County historically failing to involve tribes in the development of regional land use plans. The MSCP preserve system is first based on all of the previous regional land use plans developed by the County. Given that these land use plans assumed the continued non-use of reservation lands, the MSCP surrounded most of the reservations with its preserve system. The Tribes were not provided a seat at the (very sizable) table in the development of the overall MSCP, nor were they even provided administrative drafts of the program. As a result, the creation of the MSCP system failed to consider the economic development opportunities of the Tribes and federal laws which allow tribes to annex adjacent lands to their reservation.

> The need for the MSCP preserve system arose from the impacts of development throughout the County which has diminished habitat lands to a fraction of their historic areas. The preserve areas encompass those areas in the County that have not or could not be developed in the past 50 years and that provide a sufficient balance of habitat that County planned development will not lead to the extinction of any local species. Because the Tribes' economic conditions kept Tribal lands from being developed for much of the past 50 years while other areas in the County developed, the Tribal lands were seen as potential cornerstones for the MSCP preserve, under the assumption that they would not be developed. This is how the MSCP preserve came to surround many of the reservations. Implicitly, the habitat acreage and corridors on reservations were included in the habitat/development balancing which the County undertook with the resource agencies when the MSCP was passed.
>
> Now that the Tribes are capable of using their reservation lands, the County's habitat/development balance may well not fit the intentions of the MSCP. The Tribes should not be asked to bear the burden of the County's erroneous assumption by forfeiting development opportunities on Tribal lands to make the MSCP equation work for the County. With respect to MSCP subareas that have yet to be finally planned, the County should coordinate with the adjacent Tribes regarding reservation land uses to ensure that the County can independently satisfy resource concerns."

While the recent version of the North County Plan states the intention to make the Plan work without the inclusion of Tribal Reservation Lands (p.24), a careful review and consideration of the Plan indicates that PBMI's previous concerns remain ingrained in the Plan. We provide some of the details regarding these concerns below, and have provided these verbally with County and USFWS staff. We look forward to reviewing the next draft of the North County Plan which we hope will address these comments.

**MSCP Depiction of Reservations and Adjacent Lands**

The pre-approved mitigation areas ("PAMA") as shown in Figure 1-1 of the Plan indicates that nearly all of the boundaries surrounding the Pala Indian Reservation (as well as other North County Tribal reservations) are depicted as PAMA. Within the Plan, approximately 71% of the PAMA is assumed to be preserved over the long term. As a result, the Plan is assuming a vast majority of the land surrounding PMBI and other reservations will perpetually remain undeveloped. In making this proposed designation adjacent to the reservations, has the County considered the political and financial effect that this designation has on Tribes and on the Plan?

Even if the Plan was able to work without inclusion of the Tribal lands, the impact of perpetual open space surrounding the PBMI, while other parts of the County grow significantly, creates financial and public safety hazards for the Tribe. By isolating PBMI within a circle of open space which by proposed regulation will require significantly reduced fire prevention brush clearing, the Plan places PBMI at risk of significant damage from catastrophic fires. This concern has already been demonstrated all too real during the recent wildfires. To extend this risk perpetually could significantly damage the reservations. This should be addressed in the plan.

In addition, by surrounding PBMI with proposed preserve areas in order to limit development, the County has created significant hurdles for connecting the reservation with regional infrastructure. This design acts as subtle support to require the Tribe to fund upgrades to back country infrastructure rather than plan for such improvements jointly with the Tribe.

While the North County Plan claims to avoid inclusion of Tribal lands as part of the MSCP, the contents of the Plan suggest otherwise. Surrounding of PBMI with PAMA implies habitat connectivity of the PAMA through Tribal lands. If the Plan truly works without impacts to the reservations, in evaluating whether the Plan is successful, the Plan should assume no animal movement through these areas. Does the Plan still meet its goals under this assumption? There should be a discussion of this analysis in the Plan.

Moreover, each of the biological models used in evaluating the Plan (e.g. arroyo toad, California gnatcatcher, Stephen's kangaroo rat, habitat valuation and vegetation analysis) include in their maps designations for habitat values (and/or model values) on PBMI and other Tribal lands (e.g. Figures 3-1, 2, 3). How do these models work with an actual exclusion of the Tribal lands? If the models include assumptions that Tribal lands are not part of the Plan, why are the Tribal lands included in all of the maps? Why are the models themselves (including the assumptions used) not included in the Plan released for public review? These models should be provided in an appendix for public review.

In addition, land surrounding PBMI has been acquired and is in the process of being brought into trust pursuant to the Indian Reorganization Act. The County's Plan erroneously attributes the acquisition of off-reservation land as a result of tribal gaming activities. In fact, the ability of PBMI to regain lands previously occupied and add them to their reservation follows the Federal Government's correction the Indian Allotment Act's vast removal of Tribal lands from reservations. By designating these lands PAMA, the County ignores the decades-old federal laws and programs which benefit the Tribes.

Once these lands come into trust, they will be taken out of the mix for consideration as preserve for the Plan. The North County Plan has identified many of the properties that are likely to be taken into federal ownership and out of availability for the regional conservation Plan, indicating that the County has conducted significant investigation into this situation; however, it still designates all over 2700 acres of PBMI owned properties as PAMA. Despite knowing the circumstances of these properties, the

Plan designates the transfer of such lands into Trust as a "changed circumstance" and proposes to seek reacquisition of the properties from the Tribes. This designation fails to acknowledge the reason the lands were purchased by the Tribes in the first place. All PBMI owned property should be removed from the Plan.

The inclusion of tribally-owned non-reservation properties as PAMA sets the County up for unnecessary controversy in a couple of arenas. First, it anticipates significant preservation of habitats in the Plan acreage which will likely not be within the Plan by the time it is adopted and implemented. Instead, these lands will be in federal ownership, held in trust for PBMI, in the foreseeable future. Failing to consider this change in status could be a significant problem for the Plan. Second, it appears to be a poorly veiled attempt to establish a "land use conflict" objection by the County when the fee to trust applications are processed. Presumably this conflict is created by the County in order to obtain leverage over PBMI for financial or other concessions during the fee-to-trust process conducted by the Bureau of Indian Affairs.

Finally, the County ignores the significant investment that PBMI has made in acquiring the properties for their Tribal governmental purposes and the potential impacts to PBMI in forfeiting this investment for the benefit of the County's Plan. If the PBMI-owned non-reservation lands were included in the Plan, using the value of preserve lands and management costs cited in the Plan, the financial impact to the Tribe would be a loss of at least $30-55 million, with virtually no benefit being provided to the Tribe. Each of these issues should be addressed in the County's Plan. In order to maintain a good working relationship with PBMI, this is further reason to remove all PBMI owned land from the plan and to remove the **preventative measures** discussion on page 122.

**Cultural Resources**

A significant concern of the San Diego County tribes is the gradual degradation and loss of our cultural resources. Many of these cultural resources are found in undeveloped areas throughout the County. We were pleased to see in the list of "Social Goals" of the Plan that the protection of cultural resources was listed as a priority of the Plan. However, we were dismayed to find that there was virtually no mention of cultural resources in the remainder of the Plan. We are concerned that some of the Plan's policies, such as allowing trails and passive recreation throughout the Preserve, could create a long term impacts to these resources. In citing design guidelines for trails and preserve areas, cultural resources are not mentioned as one of the considerations. For example, a very large, significant cultural resource adjacent to the Pala Reservation—Gregory Mountain or Chok'la—is included in the PAMA, but is also included in the footprint for the Gregory Canyon Landfill. There is no mention of the cultural resource in the plan. Instead, the County seems prepared to delegate the issue of cultural resource protection to the CEQA process for individual projects. Unfortunately, this first establishes a framework for future development areas (the Plan), and leaves cultural resource considerations as an afterthought. Finally, there has been no consultation with local Tribes pursuant to section 106 of the National Historic Preservation Act. A method

of integrating cultural resources into the Plan should be established before the Plan is released in final draft form.

**Gregory Canyon—Plan's Depiction of landfill as "Proposed Project" disingenuous**

The County's inclusion of the Gregory Canyon Landfill project as PAMA and as a "proposed project" is inconsistent with other County agencies approach and fails to recognize that the County has known of the impact and footprint of this project for several years. Other County agencies have represented the landfill as essentially approved on numerous occasions. The landfill should be designated as an "anticipated" project or more accurately, among the Hard Line Projects. Hard Line projects have "planned development footprints within the Plan area that have been negotiated as Take-Authorized areas along with conserved lands." (p.26). For several years, the County has acceded to the Gregory Canyon development footprint with no meaningful reductions in the footprint over the landfill permitting process. The County is also including the same footprint in the section 7 consultation with the USFWS. As with other pre-negotiated but unpermitted developments (e.g. Warner Ranch), if the landfill was not developed according to the negotiated footprint or at all, then the area would be reconsidered as PAMA. The Plan should consider the landfill either as a vague, speculative project or as a planned, hardlined project—but not both simultaneously.

Moreover, the County has repeatedly treated the landfill project as already permitted and as an existing "project." Despite numerous code enforcement complaints from neighbors of the landfill site regarding unauthorized large scale storage of construction supplies and activities, the County has responded **for over 4 years** that they are electing not to enforce zoning and code violations because they consider the landfill a done deal. For the County to now show the landfill area as PAMA in the Plan contradicts the County's previous statements and misleads the public about the County's plans for this area. This inconsistency should be resolved in the final draft.

**Gregory Canyon--Tipping fee**

In the "Funding" section of the plan, the County's portion of the funding strategy is supported by 1) a nebulous commitment to allocate general funds toward the costs to implement the plan and 2) the generation of tipping fees from the Gregory Canyon Landfill.

The Plan fails to estimate the actual long term cost to County taxpayers from the General Fund allocations, referring only to the Board of Supervisors' "endorsement" of funding through FY 11-12. What is meant by "endorsement"? Is this guaranteed? At what amount? Moreover, the Plan limits the use of County General Fund allocations to "funding for park maintenance, preparation of Area-Specific Management Directives, MSCP Basic Stewardship and continued plan development." (p.50-51). No property acquisition. What is the source of land acquisition funding? The certainty of funding by the County is critical to the Plan and should be more completely addressed in the Plan.

The Plan funding designation of Gregory Canyon Landfill tipping fees for use in land acquisition and management is contradictory of the Plan. The Plan designates Gregory Canyon as nothing but a "proposed project", yet the landfill is designated as the sole source of "County funds" for land acquisition. A specific tipping fee is stated, indicated significant negotiations with the landfill operator. Is Gregory Canyon Landfill a potential project with unknown impacts on the Plan (as the Plan indicates)? or is it definite in the County's mind? It seems the County is seeking to use the unpermitted aspect of the project to its advantage in both directions. Identification of the tipping fee arrangement raises many additional issues which should be addressed in the Plan:

The tipping fee arrangement creates a significant disincentive for the County to responsibly handle its waste stream and encourage recycling. It also encourages the County the bring it's trash to the Gregory Canyon Landfill, creating a conflict of interest. What impact does this have to the County's requirement and commitment to recycling, reuse and resource conservation? This appears to create a partnership between Gregory Canyon Landfill and the County—please define this relationship in detail. This would also indicate that the County is sharing in the liability of the enterprise—is it? How is money received from the tipping fee program to be administered? What agreements are in place? How will the land be managed? Who will govern the land? Manage the land? Under what constraints? Where is the land acquired to be located? What is meant by the landfill's "commitment to conservation"? Is this satisfaction of permit conditions? Responses to all of these questions should be fully circulated with for public review before the next draft of the Plan is released.

Finally, it is ironic that the County's Natural Resources Conservation Plan would include a significant component that allows a project to accept trash dumping imported from Los Angeles and Orange Counties (where the landfill owner has been negotiating trash contracts) at the sacrifice of a natural canyon adjacent to the San Luis Rey River, the home of many of the species the Plan purports to conserve. The County should recognize the message that it is sending: *The County is prostituting a sensitive, sacred area with endangered species within and adjacent to it, adjacent to a Native American reservation, so that the County can use the money from the landfill to buy land elsewhere in the County, which facilitates development elsewhere in the County.* When was this arrangement first discussed with the County? How does the County rationalize the logic of this plan with environmental justice principles?

We thank the County for careful consideration of these comments and request a response to this letter. We look forward to reviewing future iterations of the Plan produced from the County.

Sincerely,

Robert Smith,
Chairman, Pala Band of Mission Indians

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April 6, 2009

Via email at mscp@sdcounty.ca.gov

Tom Oberbauer
MSCP Chief
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**Re: Comments On The North County Draft Multiple Species Conservation Program**

Dear Mr. Oberbauer:

My law firm represents several San Diego County ("County") businesses which will be directly affected by the County's adoption of the proposed North County Multiple Species Conservation Program ("MSCP"). As such, my clients appreciate the opportunity to comment on the Draft MSCP.

By this letter, my clients object to the County Planning Department's failure to analyze, or even mention, the MSCP's impacts to the County's mineral resources generally, and aggregate resources specifically. As explained below, my clients believe that in its current form, the County's Draft MSCP proposal:

1) Runs counter to both the California Surface Mining and Reclamation Act and California state policy regarding aggregate resources, as numerous areas which are currently designated "core habitat" or "linkages" by the Draft MSCP are classified MRZ-2 Prime Aggregate Resources in the most recent California Department of Conservation ("DOC") Mineral Land Classification Report (1996) (See also Cal. Pub. Res. Code § 2761(b)(2) and 2762(d); and 14 Cal. Code Regs. §3550.6);

2) Conflicts with the County's current General Plan, the draft update to the General Plan and the County's adopted Goals and Policies. (i.e. San Diego County General Plan Policy Nos. 1 and 7; see also Draft General Plan Update p. 5-18 and Draft General Plan Goal COS-10);

3) Violates the California Environmental Quality Act's ("CEQA") requirement that a project's effects on mineral resources be fully analyzed; and

4) Could, in its current form, cause significant and unavoidable environmental impacts related to habitat creation/preservation and climate change. (14 Cal. Code Regs. §15384.)

## I. The MSCP Runs Counter To The California Surface Mining And Reclamation Act And California State Policy

The California Legislature adopted the Surface Mining and Reclamation Act ("SMARA") in 1975, requiring the state geologist to classify land, according to the presence, absence, or likely occurrence of significant mineral deposits in areas of the State subject to urban expansion or other irreversible land uses deemed incompatible with mining. SMARA's objective in classifying land is to ensure that local agencies recognize mineral locations and the accompanying need for mineral production before making land use decisions that would preclude mining. Under SMARA, lands can be designated or classified as Mineral Resource Zones (MRZ) if they possess minerals which are of state-wide or regional significance.[1] As applicable here, the MRZs found throughout the MSCP area are identified in a report published by the California Department of Conservation ("DOC") entitled: *Update of Mineral Land Classification: Aggregate Materials In The Western San Diego County Production-Consumption Region*; Open-File Report 96-04 (1996). SMARA requires that the County use this report to identify mineral resources for land-use planning and conservation, and that the County incorporate that information into its General Plan by adopting policies that *protect and preserve* mineral resources for future extraction. (Cal. Pub. Res. Code §2762(a)(3).)

Among other areas, Open-File Report 96-04 designated much of the flood-plain and alluvial fan deposits along the San Luis Rey River as MRZ-2. (*Update of Mineral Land Classification: Aggregate Materials In The Western San Diego County Production-Consumption Region*; Open-File Report 96-04 (1996), p. 10; see also Plate 9.) Thus, these are aggregate areas of "regional significance" pursuant to SMARA. (14 Cal. Code Regs. §3550.6.) Unfortunately, the Draft MSCP maps and narrative[2] evidence the County's intention to preclude the extraction, processing, and access to much of the known aggregate and other mineral resources in the western County. By designating these lands "core habitat" or linkages," the MSCP would result in the loss of substantially all of the northern part of the County's prime mineral or aggregate resource sites. Locking away the majority of known prime aggregate resource sites beneath the MSCP without any analysis, discussion or even a mention of the MSCP's effects on mineral resources, is contrary to California State law and policy. As such, SMARA makes clear that if the County chooses to allow a use which precludes mineral extraction for these areas, it must identify the MSCP's effects on mined resources, and formally explain its reasoning to the State Geologist and the State Mining and Geology Board. (Cal. Pub. Res Code §§2762(d).)

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[1] This comment letter focuses on areas classified as MRZ-2 (designating areas containing mineral deposits where geologic data indicate that significant measured or indicated resources are present) and MRZ-3 (designating areas containing known mineral occurrences, but which are of undetermined mineral resource significance pending further investigation).

[2] Draft MSCP pp. 11, 23-24, 34-35, and Figure 7-1.

## II. The MSCP Conflicts With The County's Current And Draft General Plans

As observed by the County's recent draft General Plan update, and as discussed further below, the County recognizes the current shortage of aggregate and the need for the High-Quality Aggregate Provided by State and County-designated Aggregate Resource Areas ("ARAs"). (San Diego County Draft General Plan p. 5-18 (November 2008).) The shortage of aggregate in the County is a serious problem. As of January 1, 2006, northern San Diego County had permitted only 17% of its 50-year aggregate demand. (Susan L. Kohler, California Department of Conservation, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p.4.) The recent Draft County General Plan Update notes that Aggregate is essential to life in the County:

> Mineral resources are vital to community development and economic prosperity and also support recreational, educational, and scientific pursuits. The County's supply of accessible mineral resources is finite and exhaustible. Management of the remaining mineral deposits is important to ensure adequate resources are available to support the economic prosperity of future generations of County citizens.

(Draft General Plan p. 5-18; emphasis added.)

Aggregate is necessary to construct schools, offices, freeways, bridges, homes, hospitals, roads, airports, shopping centers, sewers and storm-water systems. In fact, public works projects comprise 43% of all aggregate consumption (John Parish, State Geologist, CalCIMA conference (March 2007).) According to the California DOC, the average 1,500 square-foot home with attendant infrastructure requires approximately 328 tons of sand and gravel and 202 cubic yards of concrete. (Id.)

Demand for aggregate increases in relationship to the County's growing population, however, the County's available aggregate sites are rapidly decreasing.[3] (*See* Construction Materials Association of California, *The Aggregates Industry: Its importance to California's Economy and Infrastructure*, (September 2001).) In the year 2000, the County's population was approximately 2,836,303 but that number is projected to jump to 4,508,728 people by 2050. (State of California, Department of Finance, *Population Projections for California and Its Counties 2000-2050,* (July 2007).) Not only will the County's population continue to increase, but so will its aggregate consumption. In 2001, western San Diego County's 50-year aggregate demand was estimated to be 1,099 million tons, but just five years later, the County's 50-year demand increased by 6% to approximately 1,164 million tons. (Susan L. Kohler, DOC, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p.10.) In those same five years,

[3] See attached Exhibit 1: *San Diego County's Construction Aggregates Market*, which graphically depicts the increase of aggregate demand County-wide with the steep decline in both regional production and active quarries.

western San Diego County lost 28% of its permitted aggregate resources, leaving this area of the County with only 17% of its 50-year demand. (Id. at pp. 4, 9.)

Despite the important role that mineral resources play in the County, the General Plan Update recognizes that "[urban] development and other non-compatible uses has reduced or eliminated access to many of the local important mineral deposits". (Draft County General Plan, p. 5-19; emphasis added.) In order "to meet demand, substantial volumes of aggregate are being imported from quarries located outside of San Diego County." This includes importing material to northern San Diego County from as far away as the San Gabriel Valley, San Bernardino, and Temescal Valley[4], and importing material to other parts of the County from Imperial County,[5] and even Mexico[6]. This self-imposed scarcity of mineral resources has given San Diego County the dubious honor of having the highest cost of aggregate in the State. (See San Diego County General Plan at p. 5-19; See also Susan L. Kohler, California Department of Conservation, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p.14.)

In order to preserve access to minerals, two separate policies found in the current General Plan include the "Protection of Mineral Resources" as a goal: "[T]he county will, to the extent practicable and appropriate, conserve construction aggregate resources in the entire County to ensure a minimum of fifty years supply" and the County "will, to the extent possible, protect and preserve mineral deposits and historical mining sites available for necessary commercial extraction, and for scientific, education, and recreational uses." (Current General Plan Policy Nos. 1 and 7, pages X-66 and X-71; see also Draft General Plan Goal COS-10, p. 5-21.)

The more recent Draft General Plan Update includes policies to "encourage the conservation (i.e. protection from incompatible land uses) of areas that have substantial potential for mineral extraction" (emphasis added), "discourage development that would substantially preclude the future development of mining facilities", "encourage development of land uses that are compatible with the retention of mining," and "promote the permitting of new mining facilities." (Draft General Plan policies COS-10.1, COS-10.4, COS-10.6 p. 5-21.)

Yet inexplicably, the MSCP directly conflicts with the goals of the County's current General Plan and draft General Plan Update to preserve access to important mineral resources. Given the scarcity of PCC-grade aggregate and its value to the County's continued growth, the County can ill afford to remove even more high-quality aggregate from the local market. Aggregate is the most used construction material in San Diego County, and PCC-grade aggregate such as that designated by the General Plan is "the scarcest and most valuable of all aggregate resources..." ." (Susan L. Kohler, California Department of Conservation, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p.17; Open-File Report 96-04 p. vii.) While the authors of

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[4] Susan L. Kohler, California Department of Conservation, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p.16.

[5] Imperial County to downtown San Diego is an approximate haul distance of 90 miles. (Id.)

[6] San Diego Bay region. (Id.)

the Draft MSCP did not recognize the importance of aggregate resources, and how the MSCP might affect them, the DOC saw the potential clash between the MSCP and the scarce mineral resources in San Diego County more than a decade ago: "[I]n San Diego County there are two wildlife and habitat conservation measures that are pending—the Multiple Species Conservation Plan and the Multiple Habitat Conservation Plan. It is important for local governments to carefully review the estimated resources in light of any such competing resource conservation plans." (Open-File Report 96-04 p. 8.)

Needless to say, none of the goals articulated by the current or draft update to the General Plan are reconcilable with the current Draft MSCP. Many of the MRZ areas have been included within the MSCP's boundary and designated "core habitat" or "linkage" areas. In fact the General Plan's own Mineral Resource Zones map clearly shows that an approximately 20+ mile stretch of land containing mineral resources appears to be wholly within the MSCP's "core habitat" and "linkage" boundaries. (See Exhibit 2: General Plan Figure COS-4, p. 5-20.) The MSCP's prohibition on mineral development within this 20+ mile stretch of land would remove the north County's largest known mineral resource area from mineral development; thereby forcing the County to import even more aggregate resources from other counties and Mexico. As a result, the MSCP undermines the General Plan's stated goal of protecting mineral resources and must be revised.

San Diego County should obtain the majority of its high-quality aggregate from nearby sites to minimize the environmental impacts that result from the long-hauling of aggregate. Allowing MRZ-2 and MRZ-3 zones to remain available within the MSCP as future extraction areas for PCC-grade aggregate will allow the County to fulfill both its need for building material and simultaneously protect endangered species and habitat.

## III. The Draft MSCP Violates CEQA's Requirement That A Project's Effects On Mineral Resources Be Fully Analyzed

The requirements of SMARA and CEQA intersect when a proposed project such as the MSCP, may affect land containing known or potential mineral resources. In addition to preparing the appropriate environmental document pursuant to CEQA, the lead agency must also comply with SMARA. If, as here, a lead agency proposes to approve a project which threatens the potential to extract minerals in areas "containing significant mineral deposits...of regional or statewide significance," CEQA demands an in-depth examination of the loss of available minerals as well as an analysis of how the proposed project can be reconciled with the General Plan which presumably delineates and protects mineral resources. (CEQA Guidelines Appendix G, Section X.) Similarly, SMARA demands that the lead agency also prepare a statement specifying its reasons for permitting the proposed use. (Cal. Pub. Res Code §2762(d).) This statement must then be circulated to both the State Geologist and the State Mining and Geology Board.

As seen below, the draft MSCP is inadequate as there is no discussion of the MSCP's effect on the County's limited mineral resources. The final MSCP document and project EIR must fully

identify and evaluate the MSCP's potential to adversely affect the availability of mineral resources that would be of value to both the region and the State. (CEQA Guidelines Appendix G, Section X.) Additionally, the Draft MSCP should be revised to include provisions allowing extractive uses within the MSCP area.

This letter constitutes notice to the County that both the final MSCP and the accompanying environmental document must not only address, but also fully analyze and mitigate the MSCP's effects on mineral resources.

## IV. The Draft MSCP Does Not Study The MSCP's Effects On Mineral Resources, Or Attempt To Balance Biological Resource Protection Goals With The Need For Aggregate Resources

The County's current General Plan, the Draft Update to the General Plan, and SMARA prohibit curtailing access to mineral resources. In spite of these prohibitions, the drafters of the MSCP have made no effort to study the MSCP's effects on the County's mineral resources. There are no references to mineral reserve areas, existing quarries, DOC mineral resource designations or even the mineral resource maps found in the County's own General Plan. With no discussion, the MSCP precludes development of the majority of northern San Diego County's known mineral reserves. (See Exhibit 3.) As seen further below, the County's need for PCC-grade aggregate and its desire for protecting species and habitat would be better served if the County were to protect its known (MRZ-2) and likely (MRZ-3) mineral resources, while taking care to protect biological resources through the individual site permitting process. Contrary to the implications of the MSCP, which papers over numerous mineral resources with blanket habitat preservation, extractive resources projects if permitted correctly can be compatible with habitat or species conservation.[7] The MSCP and its EIR are required by law to analyze impacts to mineral resources and find a way to balance the need for aggregate resources with its biological resource protection goals.

All aggregate mining projects must reclaim their mine sites to an alternative and/or beneficial use pursuant to each project's County-approved reclamation plan. (Cal. Pub. Res. Code §§2711(b); 2712(a).) Due to the nature of aggregate mining, a mining project's end use is routinely the establishment of lakes and riparian habitat, often incorporating a conservation easement in favor of the County to preserve the land for both public and environmental benefit. By coordinating the MSCP process so as not to prevent development of mineral resource areas, the County has the opportunity to drastically reduce its carbon footprint, improve regional air quality and provide for habitat restoration and improvement on mine sites which can later be reclaimed into wildlife corridors and/or preserves.

[7] Aggregate mine-site reclamation and end uses frequently establish wildlife corridors, riparian habitat and often use conservation easements to ensure that these end uses will remain on-site for perpetuity. (See Section V below.)

The MSCP is in a preliminary stage of development and is, by its very nature, regional in perspective. The proposed scope of the MSCP includes an area bounded on the west by the Marine Corps Base Camp Pendleton, and the cities of Oceanside, Carlsbad, Solana Beach and Encinitas; on the north by Riverside County; on the east by the Cleveland National Forest; and on the south by the MSCP South County Subarea plan. All told, the MSCP will cover over 294,849 acres, or approximately 489 square miles.[8] Given the size of the area covered by the MSCP and the generalized nature of its policies and goals, the MSCP should not be used to preempt the State and County's designation of aggregate resource areas. Rather, when an extractive use is proposed within the MSCP, site-specific impacts and MSCP consistency, such as habitat preservation for the Southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), coastal California gnatcatcher, or light-footed clapper rail (*Rallus longirostris levipes*) are more accurately and effectively considered at the project level. This way, the County can reconcile its dual goals of species protection and aggregate supply. In sum, allowing for development of the State and County designated aggregate resource areas will not adversely impact the draft MSCP.

## V. Adoption Of The MSCP In Its Current Form Could Inadvertently Cause Significant And Unavoidable Environmental Impacts

Incorporating the State and County's General Plan-designated mineral resource areas into the MSCP approach could slow the County's current need to import aggregate from long distances; thereby reducing some of the most significant environmental impacts associated with mining projects including air emissions and traffic congestion, and road maintenance. Evidence of this benefit is provided by the DOC:

> Transportation plays a major role in the costs of aggregate to the consumer. Because aggregate is a low-unit-value, high-bulk-weight commodity, it must be obtained from nearby sources to minimize both the dollar cost to the aggregate consumer and other environmental and economic costs associated with transportation. If nearby sources do not exist, then transportation costs can quickly exceed the value of the aggregate. Transporting aggregate 25-35 miles will generally double the price of the aggregate. **Transporting aggregate from distant sources also results in increased fuel consumption, air pollution, traffic congestion, and road maintenance.** Moreover, transportation cost is the principal constraint defining the market area for an aggregate mining operation. An adequate supply of local aggregate is critical to the building and infrastructure needs of California. In order to ensure local sources of aggregate, it is necessary to identify California's permitted aggregate resources and to project future aggregate demand. Aggregate materials are essential both to maintain the existing infrastructure and to provide for new construction.

[8]Draft MSCP pp. 1, 5.

(Susan L. Kohler, DOC, *Aggregate Availability in California, Map Sheet 52*, (2002), p.12; *See also* Susan L. Kohler, DOC, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p. 15, emphasis added.)

Permitting new local sources of aggregate sources actually reduces these types of impacts. As observed by Peter Berck at the University of California at Berkeley:

> The opening of a new site for the production of aggregates has both direct and indirect impacts on the environment. The indirect impacts include changes in the environmental costs of hauling aggregates and possible changes in the level of construction activity. In this note, **we show that the most likely effect of a new aggregate site is to reduce the truck miles used for aggregate hauling, which is an environmental benefit.**

(Peter Berck, Department Of Agricultural And Resource Economics And Policy, Division of Agriculture and Natural Resources, University of California at Berkeley, California Agricultural Experiment Station, Giannini Foundation of Agricultural Economics, *A Note On The Environmental Costs Of Aggregates,* Working Paper No. 994, (2005), p. 2, emphasis added.)

In other words, if an area's aggregate source is located far from the market area, the longer haul distance increases traffic and air impacts. (Susan L. Kohler, DOC, *Updated Aggregate Availability in California, Map Sheet 52*, (2006), p. 15.) In addition, utilizing local mineral resources to supply the County's aggregate demand, rather than importing aggregate from a distant location, will reduce the County's contributions to climate change effects.[9] Moreover, shorter haul distances provide economic benefits by lessening County expenditures for road maintenance and by minimizing County construction-project costs through lower aggregate transportation costs.

## VI. Conclusion

While the County's concern for protecting biological resources is admirable, biological resource protection should not come at the cost of the County's economic well-being and unintentional environmental damage. The PCC-grade aggregate found in each of the aggregate resource areas may be safely removed while still protecting sufficient habitat within the overall MSCP planning area. Site-specific mitigation and compatibility with the MSCP can be adequately overseen and incorporated into mining projects during the permitting process. As such, any impacts to endangered species, habitat or other concerns are more appropriately addressed when a future project is proposed on an aggregate resource area, not through a non-specific MSCP permanently

[9] Given the extent of discussion in the MSCP, climate change appears to be of particular concern to the County. As such, the MSCP should not preclude land-use planning that can ameliorate these effects, such as allowing the County to utilize its local aggregate resources instead of placing them off-limits. (See e.g. MSCP §8.5.8 (p. 123).)

tying up these areas. Given the above, the aggregate resource areas located within the MSCP project area should be called out as future mining resource areas within the MSCP as envisioned by the County's General Plan, and not precluded from future development as they are under the current MSCP proposal.

Sincerely,

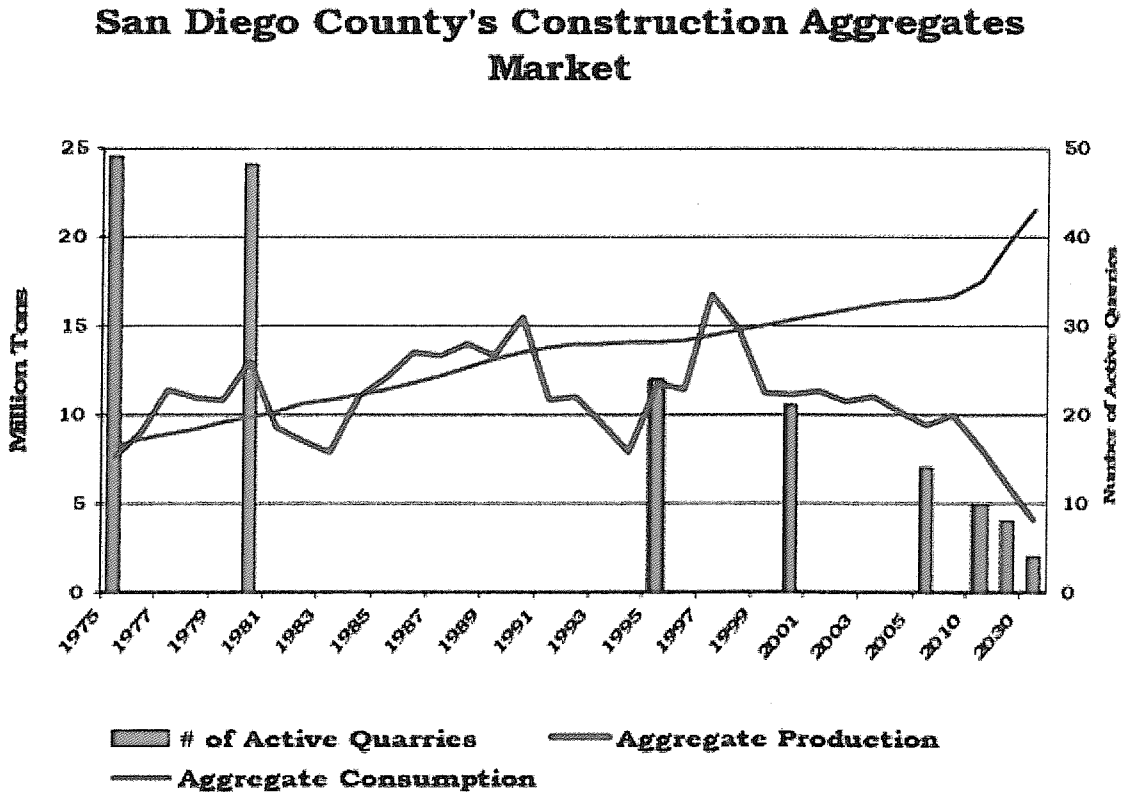
DOWNEY BRAND LLP

Patrick Mitchell

995840.2

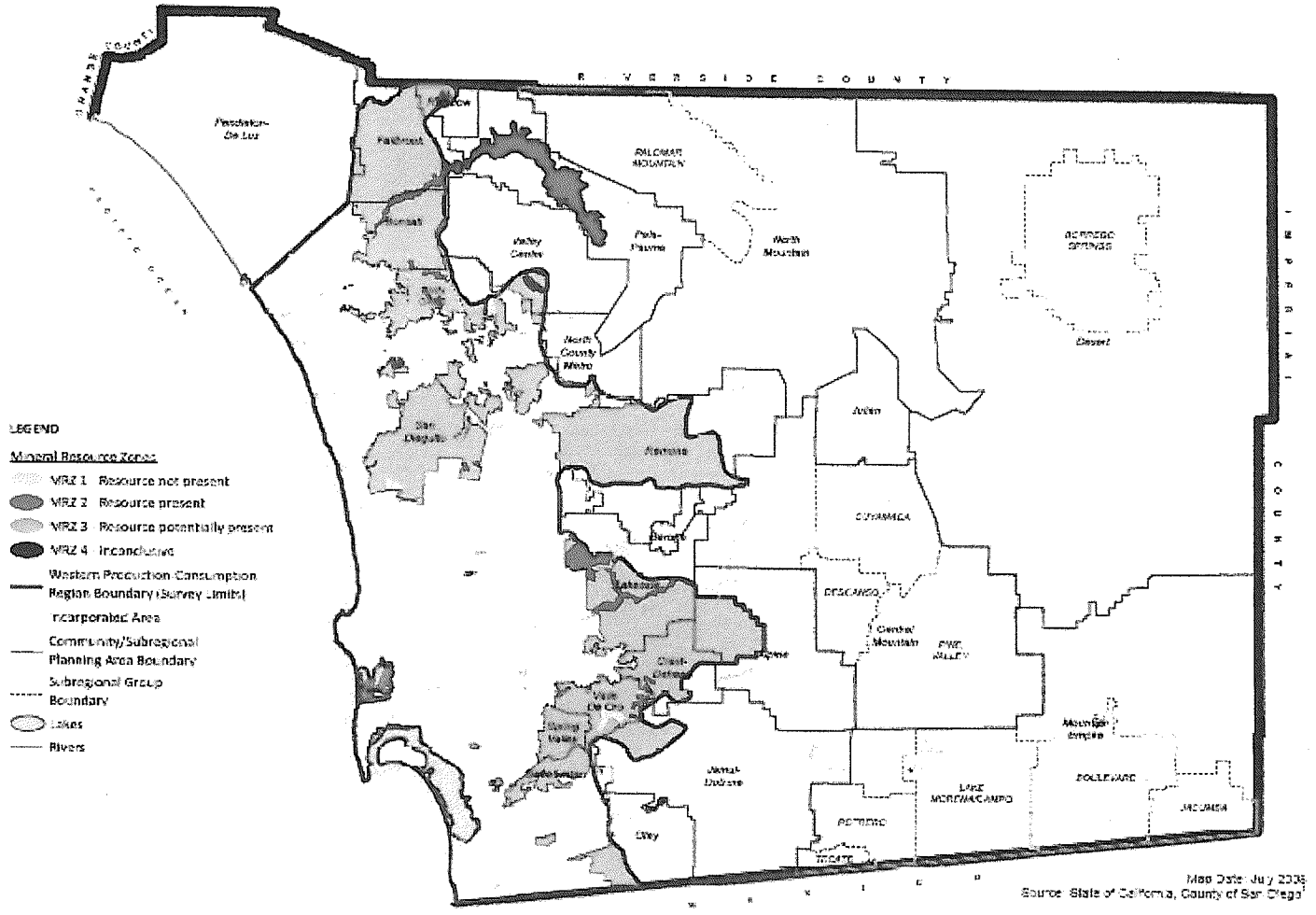
cc: Supervisor Greg Cox
Supervisor Dianne Jacob
Supervisor Pam Slater-Price
Supervisor Ron Roberts
Supervisor Bill Horn
John Parrish, State Geologist
Stephen Testa, State Mining and Geology Board
Gary Hambly, CalCIMA

# EXHIBIT 1




Source: http://calcimasandiego.org/aggregate_problem.html

# Exhibit 2

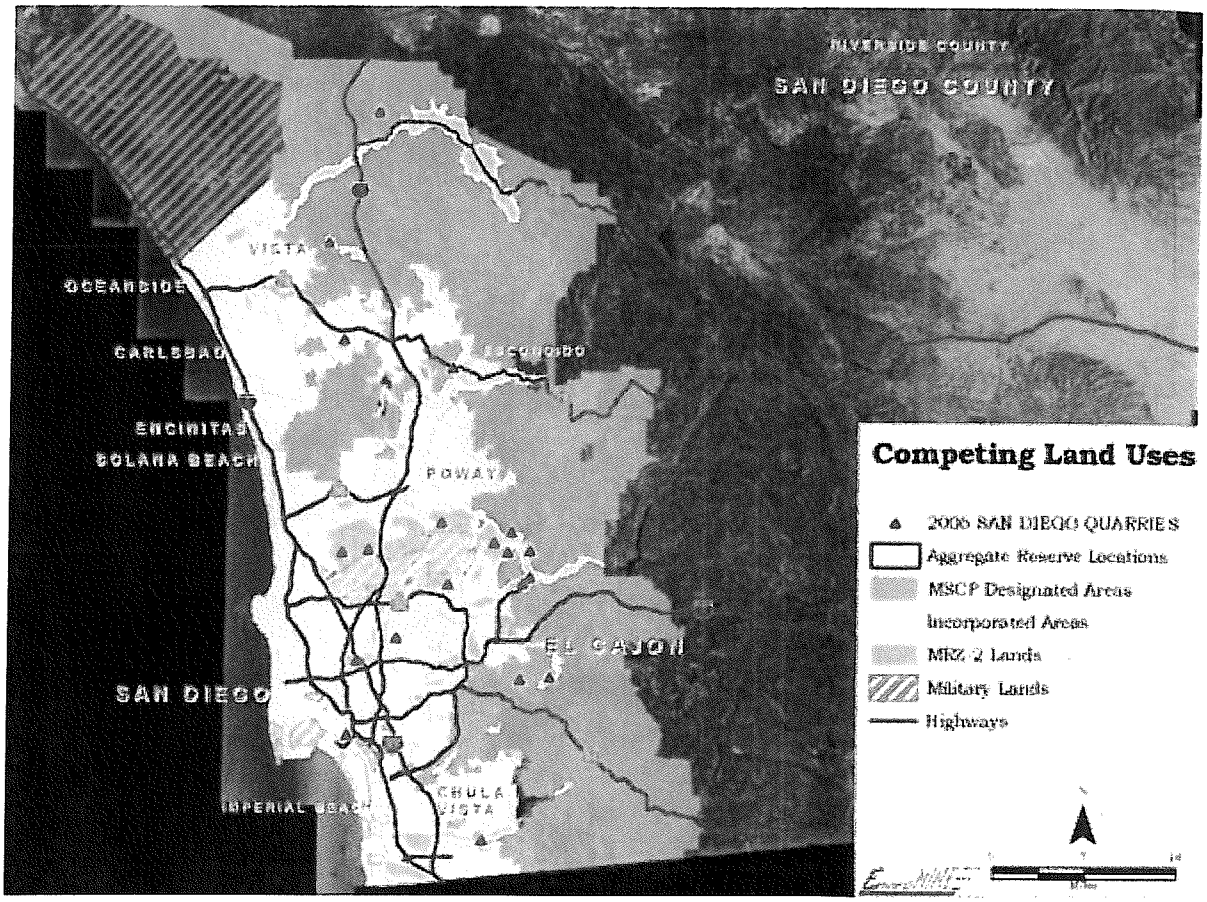



## MINERAL RESOURCE ZONES

San Diego County General Plan

Figure COS-4

# EXHIBIT 3




Source: http://calcimasandiego.org/aggregate_problem.html

April 6, 2009

Via email: mscp@sdcounty.ca.gov

County of San Diego
Department of Planning and Land Use, MSCP Division,
5201 Ruffin Rd., Suite B,
San Diego, CA 92123.

Subject: County of San Diego, Draft North County MSCP Plan

Dear MSCP Staff –

I have the following comments on the County of San Diego North MSCP Draft Plan:

North County Plan Text – MSCP pages 1- 153

Provide an appendix with who was provided notice of preparation and notice of the draft document online.

Add a cover/title page to the online version.

Make actual species covered more prominent in the TOC, i.e. have a section in the TOC instead of just introduction of the "covered species" in Table 6.2.

Pages 32-34 - Impacts from Fire, Agriculture and other Clearing – 4.5.1 – Agricultural expansion fire clearing outside the PAMA is considered exempt under the MSCP, but CEQA may apply. What does this mean? Tracking will until the County as reached the "minimum" 3,000 acre cut off mark – is minimum a typo in 2 places in this section? Unless agriculture and brush management in general require more accountability and permit regulation, the estimated impact of this "expansion" is probably too low.

4.5.2 – Fire Clearing - This section will allow up to 19,000 acres of impact and will be compensated by County Contributions to the preserve assembly.

4.5.3 –Residential Brushing and Clearing - This section will allow up to 9,000 acres to be cleared. Is it a typo where it says "Again, this number reflects the maximum amount possible if none of the projects currently in process or any additional projects where ever developed,"? Should "none" be "all" instead? If this is not a typo, what would the maximum number be if all of the in process and proposed projects were developed?

4.5.1 to 4.5.3 will allow take of 31,000 acres, only 4.5.1 mentions possible CEQA compliance needed. Please consider the CEQA impact of all 3 sections.

Also, given this large acreage of 31,000; please include a table that shows how (i.e. ratios, method of funding) and where the County will add compensatory acreage to the preserve (specify maps with County mitigation banks for this planned loss upfront) and what mechanisms will be used to acquire (as applicant driven mitigation would not apply in this case) Vague plans without teeth can be too easily overlooked and/or underfunded in the future; so please specify details now.

Discuss the need to comply with CA Code 3503 and how to ensure that "non- MSCP covered" but otherwise endangered or sensitive species will not be inadvertently taken. If the intent is to get "take" coverage exempting compliance with CA Code 3503 in this case, please spell out to the public that this means it will be acceptable to take a bird, nest, and nestlings during the breeding season which will lead to an unnecessary impact and reduction of birds. Please consider requiring a general bird breeding season brush clearing ban and/or a pre-grading survey during this period with avoidance till fledging occurs where nesting birds would be impacted.

Page 41 – mentions that the County will contribute 20,000 acres in acquisitions toward the assembly of the preserve system. Will this be the full amount to compensate for the planned 31,000 private acreage loss? Will these 20,000 acres of credit be earmarked for other things as well? Please provide a table how the County intends to count this mitigation towards impacts.

Page 40-41 - There appears to be a disconnect between Caltran's significant mitigation spending for conservation and the amount of financial impact that they cause adjacent jurisdictions to spend for invasive plant removal due to their freeway planting program choices. This issue should be remedied on a regional; if not a statewide level, immediately. Planting invasive and or non-native species (such as Carpybrotus edulis, Gazania, and African fountain grass) along linear roads causes direct and indirect impacts in terms of competition for native plants and loss of habitat for native animals when these plants escape cultivation into adjacent open space areas. Please also revise pages 40 and 41 accordingly.

Table 6.2 – Page 61 – This MSCP Plan has taken approximately a decade to develop and in the interim, burrowing owls have been decimated by West Nile Virus, development and potentially rodenticides throughout the region. Given the rapid apparent devastation by the virus and the relative failure of translocation; please reassess the population before determining coverage. Perhaps the "Unforseen" circumstances have already occurred for this species in the region. Also consider development and administration of a veterinarian vaccine for West Nile Virus during any necessary trapping for banding or translocation.

Page 69 & 141– "In kind" mitigation is defined in this section however some habitats are so broadly named that "in kind" mitigation is not likely to truly occur unless a specific and limited geographic range is defined. For instance, Englemann Oak forest would likely be mitigated in

kind in a relatively close geographical region; however, "riparian scrub" located near the Pacific Coast and border of Mexico could be mitigated with "in kind" habitat at the northernmost inland portion of the County. Given the cost discrepancies in land and rarity of habitats at the coast, this loosely defined concept continues to be problematic. Some land managers have interpreted "in kind" to occur within the same watershed, or in the case of a long riparian corridor, a defined radius or "closest available similar habitat" could be used.

Page 72-73 – Wetland Buffers – These will not be allowed to be less than 50 feet – define if that is 50 feet on either side or combined sides must equal 50 feet. Also clarify if the 50 feet must be horizontal or if it could include any vertical buffers (i.e. a channel wall). Clarify that the 50 foot requirement is for new development setbacks. Clarify any exemption/deviation process that may apply and provide reference if available.

Page 82 – 7.4-2 –Fully Protected Species – How are these species defined. Why would Least Bell's vireo and other endangered species not be included on this list?

7.4-3 -Page 83 and --List of grading restrictions for some covered species in Appendix A – the BMO - why not list all fauna covered and their breeding season and required restrictions. In the BMO, beware that reliance on the BMO may occur without consultation of the full "Conditions of Coverage" a disclaimer to please see the full Conditions of Coverage and list where – should be added to any partial list of restrictions.

Consider global climate change for the next 50 years when adding the dates animals are supposed to know to breed within in. Consider flexible dates, rather than required hard and fast dates (i.e. if they are there and they are breeding, avoid).

Clarify the obligation of incidental take of covered species to comply with other state and federal law such as the MBTA and CA Code Section 3503. If you do not clarify each and every fauna species, your plan will be interpreted as allowing incidental take of these species and may allow unnecessary take when they are breeding. Is it really the intent of the Wildlife Agencies to allow "take" during the breeding season for the greater good of the MSCP?

Table 7.5 CA Fully Protected Species – doesn't this list include federally protected species too? Add a protection status column to clarify. Clarify that this list is not exhaustive as well.

7.5-2 – Agricultural policies – one of the goals is to gain coverage for take of covered species - Expansion of Agriculture – Page 85 – Increased agricultural areas currently require discretionary review and mitigation, the new MSCP plan would allow expansion of some agriculture without specific mitigation. How will this be tracked etc? Will the applicants still go through a discretionary process to define and report expansion area for the County to tally towards its planned losses?

Page 85 – Second to last sentence, place a comma before "a predefined"…

Table 7.6- Page 87- Add grading controls to prevent the destruction of burrowing owl dens (i.e. areas with ground squirrels etc.). Add a burrowing owl specific section.

Table 7.7- page 90- Brush Management- First directive to remove vegetation should include to the roots or within 12 inches of the ground. Clarify is 100% or 50% is too be removed. If 100%, why is the County not limiting fire management to 50% thinning? Develop a better consensus regarding the utility of massive native brush clearing that may lead to type conversion into non-native grasses; an increase in the edge effects; and loss of habitat for covered species within the MSCP. Consider exemption requirements for thinning only rather than clearing. Require mitigation ratios to be met for thinning of native habitat over 50 percent. Reconsider the allowance of goats if currently allowed for brush management – goats do not eat dead overgrowth and dry fuel, they eat tender new growth that is not susceptible to fire. They will also eat new buds and seeds and thus prohibit the spread regeneration of native species in favor of invasive weeds.

February 15 to August 20, breeding bird language - Check nest/egg dates for all "covered birds" ensure that this window is large enough. Consider making the language stronger by saying avoid clearing during this season and ensure compliance with CA Code 3503 and the Fed. MBTA. There are additional inconsistent bird avoidance dates throughout the table. Use the broadest January 1–September 15 window, + the CA Code and Fed compliance requirement language

Unknown page - There is a typo- do a search for dwellings (it should be dwelling).

7.6 – Wildlife Crossings of Roadways – Page 92 – Procedures #5 – make "must consider" stronger language, i.e. "is required".

Avoid installing culverts in an area inundated with water as it will overgrow quickly and many deer, etc. won't use it. The recommendation to make separate human access may be used as a reason a wildlife crossing is prohibitively expensive. Remove this impediment as most animal usage occurs in the evening or early morning.

Tracking identified corridors use/success every 5 years is a good plan. Also provide more information on how corridors spanning multiple jurisdictions will be managed. Currently many appear to be an abject failure. Consider a regional mitigation banking plan to help fund preconstruction wildlife crossings and retrofit existing "at grade" crossings to reduce human and animal casualties from strikes. Include the use of local volunteer organizations for tracking such as the San Diego Tracking Team and the used of roadkill databases (i.e. dead animal removal tracked by location and species can help id local and regional corridors).

If the MSCP is stressing regional corridors only, ensure that the CEQA guidelines and other local plans include mechanisms to identify and preserve local links. Consider the impact on fire on

interconnected regional corridors and the value the smaller "urban sinks" and local corridors will provide.

Page 96 – last para- find and replace Staffs w/ Staff if appropriate

8.3 -page 110- "Habitrak" monitors existing and yearly habitat acquisition and infers specific species numbers by assumption. Given that fires, drought, climate change, and disease has significantly affected our region and can be assumed to continue to do so—develop/utilize existing databases for tracking individual covered species (i.e. incorporate County data with existing CA Natural Diversity Database (CNDDB) and the SD Natural History Museum's Plant and Bird Atlas data). Specific species monitoring should be utilized to foster increased cooperation between neighboring jurisdictions (i.e. a healthy County cactus wren population may provide repopulation of lost populations in a neighboring City).

As part of long term monitoring, include working with, and aiding local scientific organizations such as the Zoo's CRES, the San Diego Natural History Museum, and the local Universities to work on such issues genetic relationships and historical range, etc.

8-5 – Page 114 – Changed Circumstances - repetitive fire and disease - cacw = fire impact; buow = disease (from West Nile Virus).

Combined Events – page 114 – 3rd sentence from bottom "individually" – add "would not qualify as an unforeseen event".

Page 118 – Invasive Species – The list of invasive species should be annotated to show which are likely to be intentionally planted as a horticulture specimen (i.e. Carpybrotus edulis) versus those that spread without escape from cultivation (i.e. castor bean, giant cane, etc.). Cooperation among adjacent individual landowners is needed but in order for the County to decrease substantial funds spent on remediation, landscape plan review must be required for local development projects, In addition, better coordination with agencies developing linear landscape features such as Caltrans and railway agencies (i.e. observe newly planted hottentot fig along SR-56, escaping African fountain grass on various State Routes, and Gazania now outcompeting natives such as the CA poppies). Multi-jurisdictional coordination is needed now throughout to reduce water use and invasiveness. This issue should be remedied on a regional; if not a statewide level, immediately. Please also revise pages 40 and 41 accordingly.

Page 120 – Section 8.5.6 - Major Diseases – It appears that West Nile Virus has already impacted the burrowing owl by 20 to 50% please so further investigation before finalizing coverage for this any potentially other bird species.

<u>Appendix A – Biological Mitigation Ordinance</u> – Define "in kind" to include the a series of descending options to be met to the greatest extent possible (i.e., within the same distance to the coast, in the same watershed, areas that contain some, if not all the same sensitive or target

species, the same or similar value/cost per acre). Currently "in kind" can mean a riparian area near the beach can be mitigated with least costly acreage further inland which sets a precedent for further loss in areas under the greatest development pressure.

Appendix H – Species not covered. Consider the value of covering and planning for the movement for this (mule deer) and other large mammalian species such as mountain lion and bobcat.

Thank you for the opportunity to comment on your plan,

Holly Kicklighter

# ***RAMONA COMMUNITY PLANNING GROUP***

15873 HWY 67, RAMONA, CALIFORNIA 92065
Phone: (760)803-2001

April 6, 2009

Tom Oberbauer, Chief
MSCP Division
Department of Planning and Land Use
5201 Ruffin Rd., Ste. B
San Diego, CA 92123

RE: DRAFT NORTH COUNTY PLAN, MSCP

The Ramona Community Planning Group reviewed the Draft North County Plan, MSCP, at the meeting April 2, 2009. The following recommendation was made:

**MOTION: TO SUBMIT THE COMMENTS FROM THE AHOPE SUBCOMMITTEE:**

**(1) Chapter 4 Section 4.5.2. Fire Clearing , page 33 – fire clearing standards are minimal and need more detail relating to the following:**
- **"active fire management" relating to the "urban-wildland interface" areas**
- **use of grazing and controlled burns to reduce wild-fire risk**

**(2) Chapter 4 Section 4.3.1. Known and Anticipated Projects, page 29 - Rancho Esquilago (TM 5198) should be deleted from the MSCP document as the property is in foreclosure and not likely a viable project.**

The Motion **passed 12-0-0-0-3,** with 3 members absent.

Sincerely,

Kristi Mansolf, Secretary

for CHRIS ANDERSON, Chair
Ramona Community Planning Group

**National Quarries**
28474 North Twin Oaks Valley Rd.
San Marcos, California 92069
Phone: (800) 600-ROCK (7625)
Office Fax: (760) 726-6217
Plant Fax: (760) 726-7235
E-mail: NQGranite@aol.com

April 2, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

Re: North County MSCP

Ladies and Gentlemen:

National Quarries is one of the few sources of construction aggregates and building materials serving northern San Diego County. This quarry has been continuously active since the early 1940s and continued production is expected for another 75+ years. Because San Diego County is experiencing a severe shortage of permitted aggregate resources, maintenance of this property for mining uses is critical to the local economy.

The National Quarry property has been classified as regionally significant aggregate resource (MRZ-2a) by the State Mining and Geology Board. Pursuant to SMARA Section 2762, the lead agency (DPLU) is required to adopt policies that recognize the mineral resource value of the property, assist with management of land uses that would affect the subject property, and emphasize the conservation and development of these resources. To date, the County has not developed these policies for the National Quarries property (or any other state designated mineral properties in the county) and is therefore, not in compliance with state law mandates.

Immediately adjacent to National Quarries are lands owned and managed by the U.S. Department of the Interior, Bureau of Land Management. This 83-acre parcel is identified by Assessor's Parcel Number 172-111-04. National Quarries holds mining claims for the property and expects to conduct mining operations on this property in the near future. We are currently in the process of preparing an application for a Plan of Operations and Reclamation Plan to allow operations on this site. Extending operations onto the BLM property will more than double the reserves for National Quarries. As a result, the addition of the BLM mineral reserve to National Quarries will substantially improve the quantity of permitted reserves necessary to supply the north county.

In reviewing the MSCP maps, we note that the entire National Quarries and BLM properties are identified as Pre Approved Mitigation Area (PAMA). In consideration for the regionally significant aggregate resources found on the National Quarries property, and as these same resources extend onto the BLM property, it would appear to be a conflict to designate these important resources for habitat preservation, when this is clearly opposite to State law requirements (as required by SMARA §2762). Certainly, habitat conservation will eliminate [other] types of conflicting land uses, but the mere presence of a habitat preserve frequently results in demands on resource extraction that would not otherwise occur (e.g., extended setbacks, noise mitigation, etc.)

In light of this concern, National Quarries suggests that the PAMA designation be eliminated from the National Quarries and adjacent BLM properties currently being mined. We would further suggest that a reasonable setback from the subject properties to the PAMA designation should be provided to eliminate the affects that habitat sensitivity normally has on high intensity land uses, such as a rock quarry.

Finally, on a more specific concern, I would again urge the Planning Department to respond to the specific request of the County Planning Commission to pursue improvements and completion of North Twin Oaks Valley Road through to Gopher Canyon, as promised by the General Plan. This road continues to be barricaded by a local resident, preventing access to what has been, since the 1800s, a public road. SMARA § 2764(a) also imposes on County authorities a specific responsibility to protect access routes to and from highly valued mineral resources, stating:

> "Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction."

A formal request was submitted to the Planning Department over a year ago requesting the County take action as promised, and this letter serves as a second request that the County to respond to its own General Plan and to the requirements of State Law.

Sincerely,

John S. Petterson, Ph.D.
Owner
National Quarries

April 4, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

RE: Comments on the draft North County Plan

To Whom It May Concern:

San Diego Gas & Electric Company (SDG&E) appreciates the opportunity to comment on the County of San Diego's draft North County Plan (Plan).

Section 2.4.5 of the Plan addresses "Transportation and Utility Corridors" acknowledges that SDG&E has developed an independent NCCP/HCP. (p. 18) In addition, Section 3.3 regarding coordination with other agencies and districts states that other conservation plans (including SDG&E's NCCP) have been integrated into the planning process. (p. 24) SDG&E requests that the County include language such that the Plan explicitly recognizes that SDG&E Covered Activities (as defined in SDG&E's NCCP) can occur in preserve areas and that this has been accounted for in the Plan.

Finally, SDG&E appreciates that Appendix E acknowledges that Open Space permitted uses include public utility systems and infrastructure. (p. 15) It is critical for SDG&E to maintain and utilize corridors through the North County Area to ensure reliable service to its customers.

Thank you in advance for your consideration of our comments.

Sincerely,

Shannon Turek
Senior Environmental Specialist
San Diego Gas & Electric Company

April 6, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

MSCP Comments - North County Plan

Dear MSCP Division,

I am concerned that the attempt to protect development from catastrophic wildfire has led to the inclusion of unproductive language that allows for costly and detrimental landscape wide age-class vegetation management of natural preserve lands.

The reality is that both human and wildlife habitat is suffering from too frequent wildfire. Focus should be placed upon the first 100 feet of the wildland/urban interface, upon structural fire prevention measures and upon strategic fire breaks that allow for active fire suppression under favorable weather conditions. Artificial age-class management of CSS and Chaparral would weaken the preserve systems to alien species conversions that too often increase fire risk without providing any meaningful protection under extreme fire weather conditions.

Therefore, please **strike** the plan's following bold italic language:

---

***Fire Management for ecosystem and species health will also be considered in the development of ASMDs (See section 3.4).***

***Page 17:***
***3.4 Vegetation Managemetn (Section Under Development)***
***Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD. Vegetation management activities are covered under the Plan and lead to ecosystem health, resiliency, and fire safety. Each Ecosystem Health Plan will be prepared using the guidelines in Section 4 for the particular vegetation communities in mind. A variety of measures may be required such as maintaining fuel management zones, creating and maintaining fuel breaks, vegetation thinning, fire suppression, and controlled burns. There are a variety of methods that may be used, including but not limited to hand thinning, controlled ignitions, managed grazing, creating fire lines, mowing, and water or retardant drops. Since these measures are intended to adaptively manage for ecosystem health and public safety, mitigation will not be required and these activities will be covered under the Plan permit.***

***Management Guidelines: ---In some cases controlled fires may be used as a form of habitat management.***

***Monitoring Guidelines: ---Fire history maps maintained by CALFIRE should be reviewed at least once every 10 years to determine if preserve lands are within natural fire return intervals & for estimation of fuel age class.***

---

Thank you,

/s/
**Van K. Collinsworth, M.A.**
**Resource Analyst/Director**
**Preserve Wild Santee**
**9222 Lake Canyon Road**
**Santee, CA 92071**
**619-258-7929**

***PreserveWildSantee.org***

# Anne S. Fege, Ph.D., M.B.A.

12934 Texana Street
San Diego, CA 92129-3620
Phone 858-472-1293, Email afege@aol.com


April 6, 2009

Multiple Species Conservation Plan Program
Department of Planning and Land Use
5201 Ruffin Rd., Suite B
San Diego, CA 92123

**RE: Comments on Draft North County MSCP plan**

Thank you for the opportunity to provide comments on this Draft North County Multiple Species Conservation Plan (MSCP) for San Diego County. It reflects years of experiences, staff work, and public input on the complex issues of habitat conservation and human development in San Diego. Please consider the following comments and suggestions.

**Section 4.5, page 33, Fire Clearing**
Words are very powerful, and the term "clearing" is used repeatedly in this draft plan. Yet it is unlikely that the County intends either public or private land to be "cleared" of all vegetation, rather expects the vegetation or fuel be "reduced" or "thinned." Every occurrence of the word "cleared" should be examined, and "reduced" or "thinned" substituted when more appropriate.

**4.5.2. Fire Clearing**
"The fire clearing discussed here refers only to new clearing around structures… the clearing could result in the impact of up to 19,000 acres…."

> Impacts of fire "clearing" are estimated in this document to be up to 19,000 acres, and 9,000 for residential brushing and clearing, pages 33-34. This is likely an underestimate, as it should be calculated to cover all defensible space areas within the planning boundary (many of which have not yet modified their vegetation), not just defensible space around new structures.

**4.5.3. Residential Brushing and Clearing**
"Residential brushing and clearing on a parcel that is zoned for single family residential use shall be permitted under this Plan."

> It is not clear why the affected acres are to be cleared. The text implies that "clearing" can be done for any purposes, and it would be more reasonable to list

agriculture, livestock (including horses), and other appropriate intense uses land adjacent to residents.

**Table 7-7, page 90, Best Management Practices for Fuel Management**
"Fuel Management in Areas with Nonwoody Vegetation (around homes and commercial buildings). Remove or thin grassy areas in ways that minimize soil and root disturbance such as mowing, raking, or cutting. Only use heavy equipment when necessary, such as when the Fire Agency having jurisdiction requires disking of the area."

Concern: Disking should not be allowed in these areas, as this creates wind and water erosion and increases weeds.

**Section 8.5, page 114. Combined Events**
"Although these events are addressed in this section separately, it is recognized that several are interrelated, such as drought and repetitive fire. It is anticipated that some of these threats may occur concurrently. Such a combination may constitute an Unforeseen Circumstance."

Concern: Since drought and repetitive fire are indeed related and highly likely to occur in San Diego, this combination should be considered a Changed (not Unforeseen) Circumstance.

**Section 8.5.1, page 114, Repetitive Fire**
"For the purpose of defining Changed Circumstances, repetitive fire is defined as fire occurring in the same location as a previous fire three times in a 10-year period and causing repeat damage within preserves to 10 – 100 acres of riparian habitat and/or 200 – 1000 acres of coastal sage scrub. Repeat fire on more than any of the maximum amounts above, would constitute an
Unforeseen Circumstance."

Recommendations: The repetitive fire frequency should be lengthened to "two times in a 10-year period." The cited literature is incomplete and reflects minimum fire frequencies that interrupt natural regeneration.

"This is generally a greater concern for coastal sage scrub habitats, which regenerate mainly by seed. Many other chaparral habitat types regenerate by resprouting and therefore are not as prone to this shift in species dominance."

Concern: These statements are broad generalizations and inaccurate. More detailed accounts of seeding and sprouting responses to fire are outlined in Keeley (2006, pages 364-370).

Keeley, J.E. 2006. South coast bioregion, pp. 350-390. In N.G. Sugihari, J.W. van Wangtendonk, K.E. Shaffer, J. Fites-Kaufman, and A.E. Thoede (eds), Fire in California's Ecosystems. University of California Press. Posted at http://www.werc.usgs.gov/seki/pdfs/K2006_Fire%20in%20the%20South%20Coast%20Bioregion.pdf .

"However, there are instances in which coastal sage scrub has remained, despite frequent fires, such as the southwest slope of Otay Mountain and Camp Pendleton."

Concern: These areas have well-documented loss of natural habitats and large-scale conversion to exotic grasses, so the locations of these "instances" or exceptions need to be documented.

"The CAL FIRE fire perimeter database was analyzed for this Plan for all fires overlapping the Plan area." "Average return intervals for all eight points was 28.4 ± 4.9 years (standard error; n=14) and with a median of 28.5 years."

Comments: The narrative calculations and text for fire frequencies, fire size, average annual acres burned, and other "data" are extremely confusing, and do not support any policy or guideline in this Plan. This section should be replaced with solid, relevant analysis or deleted.

"Repeat fires over about 10 acres, especially where vegetation is heavily burned, are unusual and incidents that burn over 100 acres would be an extremely rare event based on fire history data."

Concern: This statement is simply out of date, as thousands of acres burned in 2003 and 2007 in these areas, and some acres burned on both fires.

"Planned Responses. Within 30 days of the repetitive fire incident, County staff biologists and/or preserve manager(s) will make a preliminary assessment of the effects of the repetitive fire within the preserve areas." "County staff biologists and/or preserve manager(s) shall address monitoring of natural regrowth within the damaged area for a period of up to two years, implement measures to minimize the invasion by exotic species, potential for excessive soil erosion, and/or increased potential for habitat type conversion."

Concerns: These provisions may require substantial and costly management investments, and the funds need to be set aside when the reserves are established.

**Section 8.5.3, page 118, Drought**

"Drought is not uncommon in southern California and is a phenomenon to which local natural habitats and species are adapted."

Concerns: This section is inadequate, in light of the projected climate changes in the decades ahead. Both the 2003 and 2007 wildfires followed several years of drought, which could be, but have not been demonstrated to be, attributable to climate change. As vehicle-based pollutants such as ozone and nitrous oxide increase, plants may be more susceptible to drought because the pollutants keep stomates open longer and water evaporates from leaves.

Local scientists project a number of changes in wildfire impacts, in the recent summary of San Diego's changing climate (The San Diego Foundation, 2008): "Wildfires will be more frequent and intense. Warmer spring temperatures will make the fire season longer. Droughts will make vegetation drier and further increase fire risk. Santa Ana winds may occur for a longer period of time during the fire season, prolonging extreme fire conditions. The number of days each year with ideal conditions for large-scale fires will increase by as much as 20%." Many regional and national studies and model outputs support these projections.

San Diego Foundation. 2008. San Diego's changing climate: A regional wake-up call. 24 p. Posted at http://www.sdfoundation.org/news/pdf/Focus2050glossySDF-ClimateReport.pdf .

**Appendix G, page 5, Fire Management**

"Fuel management zones around the edge of preserves may be necessary in some cases to protect existing homes."

Recommended change: Fuel management zones should be designated at the time of preserve boundary delineation, and should be excluded from the calculation of suitable habitat within the preserve.

"The San Diego County Fire Chief's Wildland/Urban Interface Task Force has prepared county-wide brush management guidelines in concert with the Wildlife Agencies (County of San Diego, 2009)."

Recommended change: Reference should not be made to a webpage that could change content anytime. And the direction on that webpage provides for excessive vegetation removal and "clearing" is inaccurate accurate advice that does not conform to current codes. For example, the webpage text states: " You need to clear combustible vegetation in a 100-foot radius from any structure." Another item directs removal of vegetation to 6" above ground: "You need to keep natural vegetation in the remaining 50 feet of the 100 foot space. This would be the area furthest away from your structure. The plants need to be thinned and cut back to no more than 6 inches above the ground."

**Section 3.4, page 17, Vegetation Management (Section Under Development)**

"Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD." "Since these measures are intended to adaptively manage for ecosystem health and public safety, mitigation will not be required and these activities will be covered under the Plan permit."

Concern: These hand thinning, prescribed burns, grazing, mowing, and other vegetation management practices may alter ecosystems by shifting species composition and increasing invasive weeds, and should not be exempt from mitigation if these impacts occur.

**Section 4.2, page 21, Coastal Sage Scrub, Chaparral, and Grassland Habitat**

Table 7, pages 21-23, Fire

"Challenges: Chaparral communities are adapted to natural fire regimes. These communities support different assemblages of plants at each stage of development—'fire following' annuals and animals that prefer open areas in early stages and "old growth" and cryptic species in later stages—therefore, maintaining a variety of age classes is important to maintain these characteristic species assemblages."

Recommended change: "'…therefore, these characteristic species assemblages will depend on the fire frequency of the land areas." The plan should not imply active maintenance or management of age classes.

"Frequent return intervals of fire may create opportunities for the establishment of invasive species, potentially causing a type conversion from shrublands to annual grasslands."

Recommmended change: …."potentially causing a type conversion from shrublands to *invasive grasses and weeds*."

"Management Guidelines… "must consider many variables such as: the potential of fire to eliminate important populations of rare, narrow endemic species, the high severity of fire in more mature chaparral communities, the risk of fires to nearby residents, and leaving refugia of unburned habitat, if possible."

Add: "risk of type conversion to invasive plants."

"Human-caused ignition sources (e.g., house fires, yard fires, chimney embers, firecrackers) should be controlled through public outreach and enforcement to … "

Delete "prevent unnatural fire frequency." and replace with, "*reduce human ignitions*."

"Monitoring Guidelines: ---Fire history maps maintained by CALFIRE should be reviewed at least once every 10 years to determine if preserve lands are within natural fire return intervals & for estimation of fuel age class."

Question: What action is to be taken, if preserve lands have lower-than-historic fire regimes?

"---Post-fire monitoring should be conducted within the first 3 years following significant fires; the first 2 growing seasons after the fire is preferable. Elements to include in monitoring include sensitive plant populations, host plants for sensitive species, existing or potential erosion threats (to life, property, or natural resources), non-native invasive species, vegetation community response, and animal movement."

Comment: This monitoring is essential, and regrettably, not done after 2003 and 2007 wildfires in areas already covered by MSCP plans.

Table 8, page 23, Invasive Species.
"Challenges"

Add to the list of challenges: Frequent return intervals of fire may create opportunities for the establishment of invasive species, potentially causing a type conversion from shrublands to invasive, non-native species

**Section 4.3, page 24, Oak Woodlands and Coniferous Forest**
Table 11, page 25, Fire
"Human-caused ignition sources (e.g., house fires, yard fires, chimney embers, firecrackers) should be controlled through public outreach and enforcement to prevent unnatural fire frequency."

Delete "prevent unnatural fire frequency" and replace with, "*reduce human ignitions*."

"Monitoring Guidelines: ---Fire maps maintained by CALFIRE should be reviewed every 10 years to determine if preserve lands are within natural fire return intervals."

Concern: What action is to be taken, if preserve lands have lower-than-historic fire regimes?

**Section 7.2, page 32, Vegetation Community Monitoring**

"The goal of vegetation community monitoring will be to maintain an ongoing inventory of the distribution and species composition and other basic characteristics of vegetation communities. To achieve this, the California Native Plant Society's Vegetation Rapid Assessment Protocol (California Native Plant Society, 2005) will be followed."

Concern: Recent field research on vegetation monitoring techniques has led to conclusions about methods, most suitable for the MSCP programs (Deutschman et al. 2008). The Rapid Assessment Protocol is no longer recommended for most monitoring objectives and the recommended methods should be incorporated.

Deutschman D.H., S. Strahm, D. Bailey, J. Franklin and R. Lewison. 2008. Using variance components analysis to improve vegetation monitoring for the San Diego Multiple Species Conservation Program (MSCP). Final Report for Natural Community Conservation Planning Program Local Assistance Grant #P0685105.

Thank you for this opportunity to comment and to contribute to the North County MSCP planning documents for the County of San Diego.

Sincerely,

Anne S. Fege, Ph.D., M.B.A.
Retired Forest Supervisor, Cleveland National Forest
Botany Research Associate, San Diego Natural History Museum
Adjunct Professor, Department of Biology, San Diego State University

cc: Jeff Murphy, Tom Oberbauer, Jared Underwood, and Chandra Waller, County of SD

**From:** Ivan [mailto:ivan@rsfassociation.org]
**Sent:** Monday, April 06, 2009 11:17 AM
**To:** Oberbauer, Thomas A
**Subject:** Draft MSCP Comments

Tom,

On behalf of the Rancho Santa Fe Association, I am transmitting our comments regarding the Draft North County MSCP. According to Figure 2.1 in the Draft Plan, there are four fragmented areas in the western half of the Rancho Santa Fe Covenant, which are designated as PAMA. However, because the area is almost entirely subdivided and developed with single family homes, the proposed PAMA designation will be of little benefit towards meeting conservation goals, as referenced on Page 57. (I have attached an exhibit showing the Covenant boundary, proposed PAMA areas and the existing parcelization.)

Obtaining small open space easements within the PAMA (as indicated on Page 58) is an unlikely option at best, given the requirement for some discretionary action as a nexus. Therefore, the Rancho Santa Fe Association officially requests that the proposed PAMA areas within the Covenant be reevaluated and removed from the plan.

Thank you for the opportunity to comment.

Sincerely,

Ivan Holler, Planning Director
Rancho Santa Fe Association

EnviroMINE Inc.
Environmental & Mine Permitting Services



April 6, 2009

County of San Diego
DPLU – MSCP Section
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

Re: North County MSCP

Gentlemen:

As you know, EnviroMINE has consistently raised concerns about the shortage of construction aggregate availability in San Diego County. We have raised this concern through meetings with County staff and in written communications. We are not alone in raising these concerns. The California Geological Survey has raised similar concerns noting that San Diego County has among the lowest volume of permitted reserves in the entire State. Caltrans (Attachment 1), SANDAG, and numerous other organizations understand that we are really dealing with a construction materials supply crisis. San Diego County currently has 12 aggregate production sites serving a population of more than 3-million. Over the next 5 years, 5 of these sites are expected to close due to resource depletion. Due to land use conflicts, expansion of these sites is not possible. During the boom years of 2005 and 2006, approximately half of the local demand for construction aggregates was provided by production sites outside of San Diego County. However, despite this alarm, County policy development favors a reduction in mineral resource availability.

The North County MSCP (NCMSCP) is but one of the county's policies that supports this conclusion. The NCMSCP is, understandably, focused towards conservation of biological resources. However, the plan completely ignores and therefore fails to attempt to reach any balance with other important resource values. The Department of Conservation (DOC) has published a number of studies that identify the location of important aggregate resources in the county. The most recent[1] identifies more than 95,000 acres of land that exhibits geologic conditions suitable for aggregate development and production. However, when these areas are compared against conflicting land uses, the total area potentially available for resource extraction is reduced to less than 3,000 acres (throughout the entire county). The remaining acreage is further constrained by habitat preservation pursuits.

[1] Update of Mineral Land Classification: Aggregate Materials in the Western San Diego County Production-Consumption Region, 1996, DMG Open-File Report 96-04

3511 Camino Del Rio South, Suite 403 - San Diego, CA 92108
(619) 284-8515/(800) 755-3995 - Fax: (619) 284-0115

The NCMSCP identifies 3 distinct goals: biological, economic, and social. Of these goals, the economic and social benefits are not actually supported by the NCMSCP. The NCMSCP states that permitting is streamlined. However, experience with permit negotiations under the South County MSCP suggests that permitting is not facilitated. Regardless of the development proposal, extended negotiations are necessary. The applicant [hopes] to gain acceptance of a project proposal by the County and wildlife agencies. The County and wildlife agencies essentially dictate terms to land owners with demands for substantial exactions that eliminate much of a property's usefulness. Only when a land owner concedes to wildlife agency demands can they expect to improve a small portion of their property. The text in the draft NCMSCP makes it sound like it is a simple process. Nothing could be further from the truth.

The economic goals are further frustrated by the proposed habitat preserve system. Mining of the regionally significant mineral resources found within the NCMSCP area is completely compromised by PAMA and pre-negotiated preserve areas. With exception to operating mining projects (2), all of the state designated mineral resources are found within PAMA, pre-negotiated preserve areas, or Indian reservations (Attachment 2).

One particular area of concern is within the Merriam Mountain area west of Interstate 15. Here, more than 600 acres of state designated regionally significant aggregate resource is proposed for location within a pre-negotiated preserve area. The habitat for this area is Chaparral, the most abundant habitat in southern California (i.e., it is not unique or sensitive). In contrast, were this property developed for aggregate resource production, this single area could provide northern San Diego County with sufficient resource to satisfy more than 200 years of demand. Placement of this resource within a "hands-off" preserve is irresponsible from a resource policy standpoint.

Another area of concern is the substantial aggregate reserves found within the San Luis Rey River floodplain (Attachment 2). Formerly, this area was the single largest source of Portland Cement Concrete sand in the county. However, due to over stated habitat sensitivities, mining was forced out of this area. Sensitive design can facilitate dual use; opening this area for habitat improvement and conservation while providing badly needed local resources for economic development.

Aggregate resources are the most basic of commodities; they are irreplaceable. Each San Diego County resident uses more than 5 tons of aggregate annually. Without readily available aggregate resources, our economy will not function, new construction is not possible and our infrastructure will crumble. If aggregates are not available locally, where will these resources come from?

Review of a recent DOC publication[2] identifies that all areas of California are currently experiencing shortages of permitted aggregate reserves. There are no areas of abundance. This study identifies San Diego County as one of the most impacted

[2] Aggregate Availability in California, California Geological Survey, 2006

areas for aggregate supply. Due to these shortages, San Diego County is drawing significant quantities of aggregate supplies from surrounding areas. However, as shown on Attachment 3, surrounding areas are also suffering from material shortfalls.

Unless the NCMSCP has an unspoken goal of eliminating future aggregate production, and therefore inhibiting the San Diego County economy, allowances for aggregate production must be provided in the plan. The NCMSCP cannot be [just] a habitat planning and management tool, it must also consider the value of other resources and their contribution to our quality of life. Falling short of this objective, the NCMSCP also fails in its Social goals.

The proposed NCMSCP must be redrafted to consider the affects of the plan on regional aggregate supply. SANDAG is currently in the process of identifying aggregate resources within the economic range of local markets. The goals of this study will be to ensure a continuing source of aggregates to meet the county's growing demand for these resources. Prior to completing the draft NCMSCP, it is suggested that the County work closely with SANDAG to identify mineral resources and incorporate these recommendations within the NCMSCP. Further, policies should be established that encourage and facilitate development of these resources. Simply ignoring the issue is irresponsible and will not make it go away.

Sincerely,

Warren R. Coalson
President

cc: John Parrish, State Geologist
Stephen Testa, State Mining and Geology Board
Gary Hambly, CalCIMA
Gary Gallegos, SANDAG
Pedro Orso Delgado, Caltrans, District 11
San Diego County Board of Supervisors

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION**
OFFICE OF THE DIRECTOR
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-5266
FAX (916) 654-6608
TTY 711

*Flex your power!*
*Be energy efficient!*

September 30, 2008

Dear Transportation Partners:

In February 2006, I sent a letter to you stressing the need for permitting new aggregate resources within California. As you are aware, these materials are one of the critical resources required to meet current and expected infrastructure improvement needs for transportation improvements, flood protection, and public and private facilities in the State of California. Toward this effort, I want to again highlight the tremendous need to increase the supply of aggregate resource materials in the State.

Over the past three years, the California Department of Transportation (Caltrans) delivered 754 major projects with a construction value of more than $8.3 billion. I want to continue this success rate with reasonably expected cost effectiveness. This is why it is critical to increase California's permitted aggregate resource reserves.

In the last two years, Caltrans has taken a number of steps to promote aggregate resource needs throughout the State. Caltrans and the Business, Transportation and Housing Agency have provided decision makers with information on the need to increase California's aggregate resource supply and will continue to do so in the future.

To date, Caltrans personnel have made presentations to several local decision makers in the State, including Nevada, Butte, and Fresno counties, the San Joaquin Valley, and communities in the Bay Area. Caltrans has also coordinated with the construction industry, public decision-makers, and government officials in discussing potential opportunities to increase California's aggregate resource supply. Caltrans' work and partnerships in the *GoCalifornia* Construction Industry Capacity Expansion (ICE) action Action Plan has also played a significant role. This work included several workshops and meetings with stakeholders, including the ICE Workshop and Materials Summit held in April. The summit provided a means to communicate with those that are involved with the permit process in order to identify the key issues that arise when attempting to permit a mining facility. Caltrans will continue that collaborative effort. Other collaborative efforts have included developing cooperative partnerships with the California Department of Conservation and the U.S. Department of the Interior, Bureau of Land Management, on mining, reclamation, and permitting issues.

c: Gary Hambly, California Construction and Industrial Materials Association
Charlie Rea, California Construction and Industrial Materials Association
Sam Hassoun, Associated General Contractors of California
Tara McGovern, Engineering and Utilities Contractors Association
Patrick D. Leathers, The Gualco Group, Inc.
RTPAs
MPOs
County Transportation Commissions

- The total transportation cost of aggregates (at $0.10 per ton per mile) shipped 35 miles average distance throughout California would be $1.67 billion (19.0 million trucks x 25 tons x 35 miles x $0.1), and over $2.38 billion if shipped an average distance of 50 miles. The statewide transportation cost savings of reduced hauling distance would amount to **$710 million a year** (or a 30 percent cost savings).

- The California Department of Transportation (Caltrans) estimates that on average, about $2.55 billion is spent on state and local capital outlay projects each year, and on average, aggregates account for **8-10 percent** of total project costs, or about **$250 million** annually. A 30 percent increase/decrease in shipping cost of aggregates would increase/decrease the total annual project costs by **$75 million per year.**

- The reduction in aggregate-related truck miles of travel would also reduce traffic congestion and traffic accidents on roads, but these impacts would be difficult to estimate. An additional benefit from truck trip reduction would be reduced pavement deterioration. Caltrans expects to spend about $700 million annually on pavement rehabilitation projects. Assuming trucks account for 60 percent of the pavement damage on the state highways, and aggregate-trucks on average account for 5 percent of all truck travel on the State highways, the trucks shipping aggregates would account for about **$20 million** of cost savings in pavement rehabilitation each year.

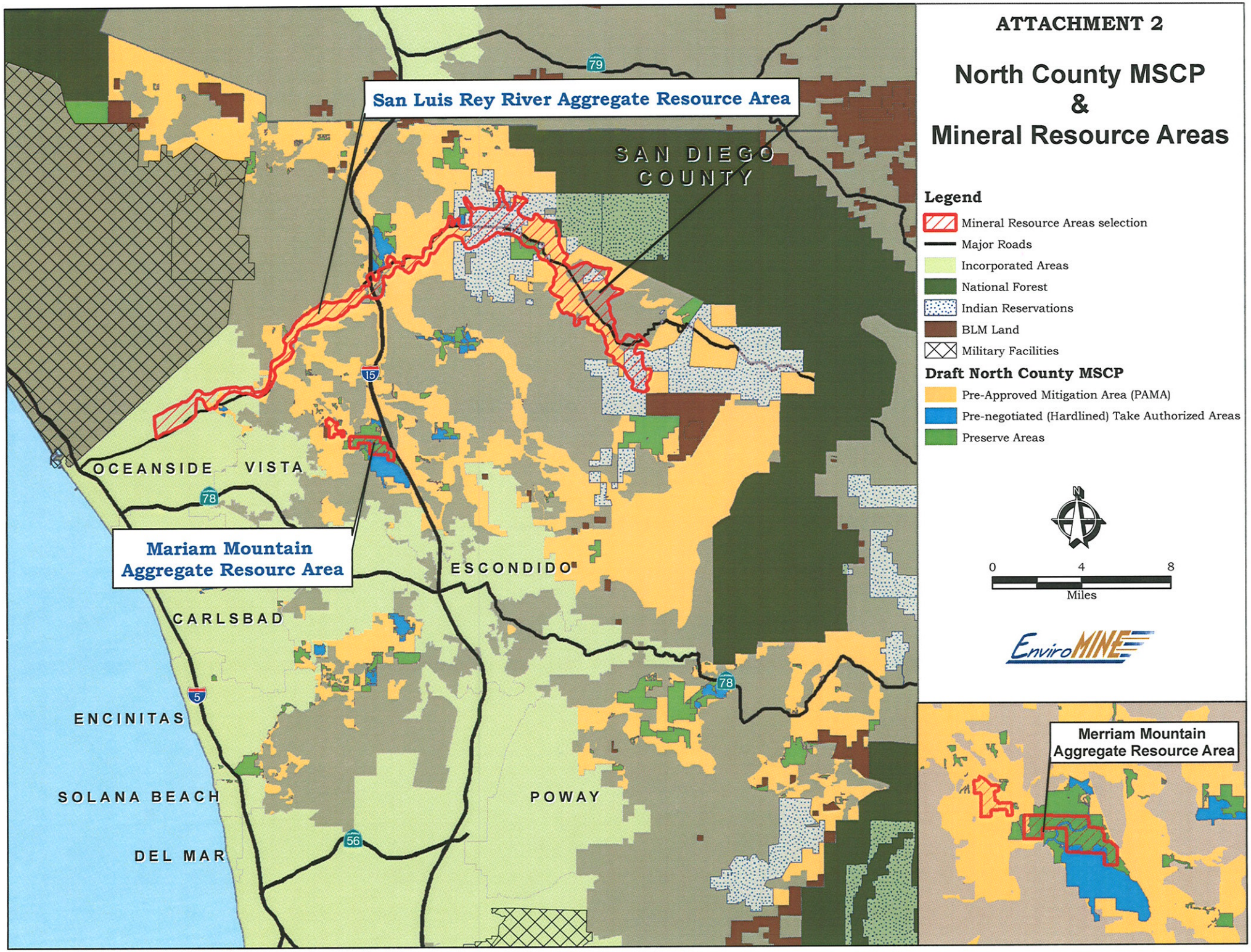
- Project delays due to lack of aggregate supply in the area would also result in project cost escalation and reduced user benefits (reduced travel time and increased accidents) that would have otherwise been generated. A delay of 10 percent of the projects (or $255 million in capital outlay expenditures) for one year would increase the cost of the State and local capital outlay program by **$13 million a year** (at 5 percent average cost escalation factor).

- Generalizing, and pro rating, the user benefits estimated for the 2006 Interregional Transportation Improvement Program (ITIP) projects, a delay of 10 percent of the capital outlay program for one year would also cost California about **$97 million** in increased roadway congestion and traffic accidents.

In conclusion, permitting and expansion of additional construction aggregate supply sources in California suggests potentially significant benefits and cost savings that would provide a high payoff and worthwhile effort for the State to undertake. Again, those benefits include:

- A reduction in emissions from trucks with a reduction in truck miles of travel for hauling aggregates.
- A shorter hauling distance which would reduce aggregate-truck miles of travel and the cost of the materials.
- A reduction of pavement deterioration from fewer truck miles traveled, which would allow rehabilitation resources to be available for other critical maintenance improvements.
- A reduction in project delays due to lack of aggregate supply in the area, which leads to increased project costs.
- A reduction in aggregate-related truck miles of travel would also reduce traffic congestion and traffic accidents on roads.

Office of Transportation Economics
Division of Transportation Planning
California Department of Transportation
March 2008


ATTACHMENT 2
North County MSCP
&
Mineral Resource Areas
San Luis Rey River Aggregate Resource Area
Mariam Mountain
Aggregate Resourc Area
SAN DIEGO
COUNTY
OCEANSIDE
VISTA
ESCONDIDO
CARLSBAD
ENCINITAS
SOLANA BEACH
DEL MAR
POWAY
79
15
78
5
56
Legend
Mineral Resource Areas selection
Major Roads
Incorporated Areas
National Forest
Indian Reservations
BLM Land
Military Facilities
Draft North County MSCP
Pre-Approved Mitigation Area (PAMA)
Pre-negotiated (Hardlined) Take Authorized Areas
Preserve Areas
N
0
4
8
Miles
EnviroMINE
Merriam Mountain
Aggregate Resource Area

ATTACHMENT 3

**MAP SHEET 52**

*(UPDATED 2006)*

# AGGREGATE AVAILABILITY IN CALIFORNIA

## 2006


**DEPARTMENT OF CONSERVATION**
***California Geological Survey***

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**THE RESOURCES AGENCY**
MIKE CHRISMAN
*SECRETARY FOR RESOURCES*

**STATE OF CALIFORNIA**
ARNOLD SCHWARZENEGGER
*GOVERNOR*

**DEPARTMENT OF CONSERVATION**
BRIDGETT LUTHER
*DIRECTOR*

## MAP SHEET 52

*(UPDATED 2006)*

# AGGREGATE AVAILABILITY IN CALIFORNIA

By

Susan Kohler

**2006**

DEPARTMENT OF CONSERVATION
CALIFORNIA GEOLOGICAL SURVEY
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# TABLES

# INTRODUCTION

California Geological Survey (CGS) Map Sheet 52, scale 1:1,100,000, and this accompanying report provide general information about the current availability of California's permitted aggregate resources. Although the statewide and regional information on the map and in this report may be useful to local decision-makers, the more detailed information contained in each of the aggregate studies employed in the compilation of Map Sheet 52 should be used for land-use and decision making purposes.

Map Sheet 52 (2006) is an update of the original version published in 2002 (Kohler, 2002). This updated Map Sheet 52 summarizes data from reports compiled by the CGS for 31 aggregate study areas throughout the state. These study areas cover about 25 percent of the state and provide aggregate for about 90 percent of California's population. This report is divided into three parts: Part I provides data sources and methods used to derive the information presented, Part II compares the updated 2006 Map Sheet 52 to the original map, and Part III is an overview of construction aggregate. **All aggregate data and any reference to "aggregate" in this report and on the map pertain to "construction aggregate" defined for this report as alluvial sand and gravel or crushed stone that meets standard specifications for use in portland cement concrete (PCC) or asphalt concrete (AC).** (See *Aggregate Quality and Use* section).

# PART I: DESCRIPTION OF MAP SHEET 52, AGGREGATE AVAILABILITY IN CALIFORNIA

Map Sheet 52 is a statewide map showing a compilation of data about aggregate availability collected over a period of about 28 years and updated to January 1, 2006. The purpose of the map is to compare projected aggregate demand for the next 50 years with currently permitted aggregate resources in 31 regions of the state. The map also highlights regions where there is less than 10 years of permitted aggregate supply remaining (red circles). The following sections describe data sources and methodology that were used in the development of the map.

## Mineral Land Classification Reports and Aggregate Studies

Data regarding aggregate resources and projected aggregate demand shown on Map Sheet 52 are updated from a series of mineral land classification reports published as Special Reports (SR) and Open-File Reports (OFR) by CGS between 1981 and 2005. These reports are referenced in the Appendix. They were prepared in response to California's Surface Mining and Reclamation Act of 1975 (SMARA) that require the State Geologist to classify land based on the known or inferred mineral resource potential of that land. SMARA, its regulations and guidelines, are described in Special Publication 51(Division of Mines and Geology, 2000). The Mineral Land Classification process identifies lands that contain economically significant mineral deposits. The primary goal of mineral land classification is to ensure that the mineral resource potential of lands is recognized and considered in land-use planning. The classification process includes an assessment of the quantity, quality, and extent of aggregate deposits in a study area.

The aggregate study areas with the greatest projected future need for aggregate are the South San Francisco Bay, San Gabriel Valley, Temescal Valley-Orange County, Western San Diego County and San Bernardino. Each is expected to require more than a billion tons of aggregate by the end of 2055. Aggregate study areas that have small demands generally are located in less populated areas. These include the Sierra Nevada counties of Placer, Nevada, and El Dorado, and Merced and Tulare counties in the San Joaquin Valley.

## Methodology

Before selecting a method for predicting a 50-year aggregate demand, historical aggregate use was compared to such factors as housing starts, gross national product, population, and several other economic factors. It was found that the only factor showing a strong correlation to historical aggregate use was population change. Consequently, a per capita aggregate consumption forecast model is used for most of the aggregate study projections. This method of forecasting aggregate consumption benefits from its simplicity and the availability of population forecast data. The California's Department of Finance (DOF) makes 50-year county population forecast using U.S. census data.

The steps used for forecasting California's 50-year aggregate needs using the per capita consumption model are: 1) collecting yearly historical production and population data for a period of years ranging from the 1960s through 2005; 2) dividing yearly aggregate production by the population for that same year to determine annual historical per capita consumption; 3) projecting yearly population for a 50-year period from the beginning of 2006 through 2055; and, 4) multiplying each year of projected population by the average historical per capita consumption, the sum of which equals a total 50-year aggregate demand. It should be noted that the years chosen to determine an average historical per capita consumption may differ depending upon historical aggregate use for that specific region. For example, in Shasta County, major construction projects from the 1940s through the 1970s caused historical per capita consumption rates to be extremely high and unrepresentative of future aggregate demand (Dupras, 1997). Consequently, an average historical per capita consumption rate for Shasta County was based on the years 1980-1995.

## Effectiveness of the Per Capita Consumption Model

The assumption that each person will use a certain amount of aggregate every year is a simplification of actual usage patterns, but overall, an increase in the population leads to the use of more aggregate. Over a long enough period, perhaps 20 years or longer, the random impacts of major public construction projects and economic recessions tend to be smoothed out and consumption trends become similar to historic per capita consumption rates. Per capita consumption is a commonly used and accepted national, state, and regional measure for purposes of forecasting.

The per capita consumption model has proved to be effective for predicting aggregate demand in major metropolitan areas. The Western San Diego and the San Gabriel Valley P-C regions are examples of how well the model works, having only a 2 percent and a 5 percent difference, respectively, in actual versus predicted aggregate demand (Miller, 1994; 1996). However, the per capita model may not work well in county aggregate studies or in P-C regions that import or export a large percentage of aggregate resulting in a low correlation between production districts and aggregate market areas. When this happens, projections are based on a historical production model where 50-year aggregate demand is determined by extending a best-fit line of historical aggregate production data for a county or region. This model was used to project Yuba City-Marysville's 50-year demand because the region exports about 70 percent its aggregate into neighboring areas such as northern Sacramento County and Placer County.

## Non-Permitted Aggregate Resources

Non-permitted aggregate resources are deposits that may meet specifications for construction aggregate, are recoverable with existing technology, have no land overlying them that is incompatible with mining, and currently are not permitted for mining. While not shown on Map Sheet 52, non-permitted aggregate resources are identified and discussed in each of the mineral land classification reports used to compile the map (See Appendix). There are currently an estimated 74 billion tons of non-permitted construction aggregate resources in the 31 aggregate study areas shown on the map. While this number is large, it is unlikely that all of these resources will ever be mined because of social, environmental, or economic factors. Aggregate resources located too close to urban or environmentally sensitive areas can limit or stop their development. These resources may also be located too far from a potential market to be economic. In spite of such possible constraints, non-permitted aggregate resources are the most likely future sources of construction aggregate potentially available to meet California's continuing demand. Factors used to calculate non-permitted resource amounts and to determine the aerial extent of these resources, are given in each of the aggregate classification reports listed in the Appendix.

## Aggregate Production Areas and Districts

Aggregate production areas are shown on the map by five different sizes of triangle. A triangle may represent one or more active aggregate mines. The relative size of each symbol corresponds to the amount of yearly production for each mine or group of mines. Yearly production was based on data from the Department of Conservation's Office of Mine Reclamation (OMR) records for the calendar year 2005. The smallest triangle represents a production area that produces less than 0.5 million tons of aggregate per year. These triangles represent a single mine operation. About 85 percent of the production areas on the map fall into this category, and many are located in rural parts of the state. The largest triangle represents aggregate mining districts with production of more than 10 million tons per year. Only two aggregate production districts fall into this category – the Temescal Valley District in western Riverside County and the San Gabriel Valley District in Los Angeles County. The Temescal Valley Production District produced about 12 million tons of aggregate in 2005 and is the largest sand and gravel production district in the United States.

## Aggregate Study Areas with Less than Ten Years of Permitted Resources

Four of the 31 aggregate study areas – North San Francisco Bay, Sacramento County, Fresno County, and northern Tulare County – are projected to have less than 10 years of permitted aggregate resources remaining. They are highlighted by red halos around the pie diagrams on Map Sheet 52 and appear in bold type in Table 1. Calculations of depletion years are made by comparing the currently permitted resources to the projected annual aggregate consumption in the study area on a year-by-year basis. This is not the same as dividing the total projected 50-year demand for aggregate by 50 because, as population increases, so does the projected annual consumption of aggregate for a study area. It should be noted that these numbers are estimates and they can quickly change. For example, if a neighboring region runs out of aggregate and begins to import aggregate from another region, a 20-year supply can quickly drop to just a few years.

| AGGREGATE STUDY AREA | Permitted Aggregate Resources as of 1/1/01 (million tons) Map Sheet 52, 2002 | Permitted Aggregate Resources as of 1/1/06 (million tons) Map Sheet 52, 2006 | Percent Difference (%) |
|---|---|---|---|
| Bakersfield P-C Region | 167 | 115 | -31 |
| Barstow Victorville P-C Region | 115 | 133 | 15 |
| Claremont-Upland P-C Region | 134 | 147 | 10 |
| Eastern Merced County | 15 | 53 | 253 |
| El Dorado County | 13 | 19 | 46 |
| Fresno P-C Region | 98 | 71 | -27 |
| Glenn County | 56 | 17 | -70 |
| Monterey Bay P-C Region | 243 | 347 | 43 |
| Nevada County | 35 | 31 | -11 |
| Northern Tulare County | 12 | 12 | 0 |
| North San Francisco Bay P-C Region | 178 | 49 | -73 |
| Palmdale P-C Region | 216 | 181 | -16 |
| Palm Springs P-C Region | 70 | 176 | 151 |
| Placer County | 43 | 45 | 5 |
| Sacramento County | 65 | 67 | 3 |
| Sacramento-Fairfield P-C Region | 130 | 164 | 26 |
| San Bernardino P-C Region | 356 | 262 | -26 |
| San Fernando Valley-Saugus Newhall * | **154 | 88 | -43 |
| San Gabriel Valley P-C Region | 241 | 370 | 54 |
| San Luis Obispo-Santa Barbara P-C Region | 93 | 77 | -17 |
| Shasta County | 28 | 51 | 82 |
| Southern Tulare County | 196 | Proprietary | Proprietary |
| South San Francisco Bay P-C Region | 564 | 458 | -19 |
| Stanislaus County | 35 | 51 | 45 |
| Stockton Lodi P-C Region | 260 | 196 | -25 |
| Tehama County | 40 | 36 | -10 |
| Temescal Valley-Orange County* | **837 | 355 | -58 |
| Ventura County (combined Western Ventura County and Simi Valley P-C Region)* | **129 | 106 | -18 |
| Western Merced County | >50 | Proprietary | Proprietary |
| Western San Diego County P-C Region | 275 | 198 | -28 |
| Yuba City-Marysville P-C Region | >2,000 | 409 | -80 |
| **Total** | **6,848** | **4,343** | |

* Two P-C Regions have been combined for updated Map Sheet 52

**Total for combined P-C Regions

**Table 2.** Comparison of permitted aggregate resources between Map Sheet 52, 2002 and Map Sheet 52, 2006.

355 million tons as compared to the total resources for both of the original P-C regions of 837 million tons. This results in a decrease of 58 percent (See Table 2).

Western Ventura County has depleted its permitted aggregate resources and now relies heavily on aggregate production from the Simi Valley area. For the updated map, these two regions have been combined to form the Ventura County aggregate study area. Permitted aggregate resources for this area decreased by about 18 percent since the original Map Sheet 52 (See Table 2). A shortage of coarse aggregate in Ventura County has resulted in rock being hauled up to 60 miles into the county from the Palmdale aggregate production region.

Both the San Fernando Valley and the Saugus Newhall P-C regions shown on the original map are rapidly running out of permitted aggregate resources. These two regions have been merged for the updated map to form the San Fernando Valley-Saugus Newhall aggregate study area. Loss of permitted aggregate resources because of mine closures in the Saugus Newhall P-C region has resulted in increased importation of aggregate into the region from the San Fernando Valley P-C region. This puts an additional drain on San Fernando Valley's permitted resources that already are in short supply. The new San Fernando Valley-Saugus Newhall aggregate study area, shown on the updated map, has 88 million tons of permitted resources, or 19 percent of its projected 50-year demand (See Table 1). The 88 million tons includes 56 million tons of newly permitted aggregate resources granted to CEMEX in 2004 for its Soledad Canyon operation in Los Angeles County.

## Decreases in Permitted Aggregate Resources

Eighteen of the 31 study areas shown on the updated map experienced a decrease in permitted aggregate resources since the original map was completed (See Table 2). Included in these 18 areas are Western Merced County and Southern Tulare County. Permitted resources for both of these county study areas cannot be shown because they are proprietary. Six of the18 areas had significant decreases of over 50 percent. They include the Glenn County, North San Francisco Bay, Temescal Valley-Orange County, Western Merced County, Southern Tulare County, and Yuba City-Marysville aggregate study areas.

Total permitted resources for all 31 areas decreased from 6.848 billion tons to 4.343 billion tons – a loss of 2.5 billion tons. Most of this decrease was because of aggregate consumption and a large reduction in Yuba City-Marysville's permitted aggregate resources. Approximately 1.2 billion tons of aggregate has been consumed in the 31 study areas during the five-year period from 2001-2005. The Yuba City-Marysville area had a decrease in permitted aggregate resources of 1.6 billion tons despite the addition of over 100 million tons of newly permitted resources to the area. The submission of revised reclamation plans contributed to most of the decrease. Other reasons for reductions in permitted aggregate resources throughout the state include economic or environmental conditions causing mine closures, new in-stream mining regulations, natural changes in the quality of aggregate deposits, and haulage restrictions.

## Increases in Permitted Aggregate Resource

Of the 31 study areas shown on the updated Map Sheet 52, 12 areas had increases in permitted aggregate resources. Most of these increases are because of newly permitted or expanded mining operations. An expansion may increase the footprint of the mine or, as in the case of San Gabriel

| AGGREGATE STUDY AREA | Percentage of Permitted Aggregate Resources as Compared to 50-Year Demand as of 1/1/01 Map Sheet 52, 2002 | Percentage of Permitted Aggregate Resources as Compared to 50-Year Demand as of 1/1/06 Map Sheet 52, 2006 |
|---|---|---|
| Bakersfield P-C Region | 68 | 46 |
| Barstow-Victorville P-C Region | 70 | 74 |
| Claremont-Upland P-C Region | 50 | 49 |
| Eastern Merced County | 15 | 50 |
| El Dorado County | 15 | 21 |
| Fresno P-C Region | 17 | 11 |
| Glenn County | 71 | 21 |
| Monterey Bay P-C Region | 64 | 91 |
| Nevada County | 21 | 25 |
| Northern Tulare County | 11 | 10 |
| North San Francisco Bay P-C Region | 27 | 8 |
| Palmdale P-C Region | >100 | 27 |
| Palm Springs P-C Region | 35 | 60 |
| Placer County | 34 | 26 |
| Sacramento County | 9 | 9 |
| Sacramento-Fairfield P-C Region | 58 | 70 |
| San Bernardino P-C Region | 37 | 24 |
| San Fernando Valley-Saugus Newhall * | ** | 19 |
| San Gabriel Valley P-C Region | 19 | 32 |
| San Luis Obispo-Santa Barbara P-C Region | 94 | 32 |
| Shasta County | 24 | 42 |
| Southern Tulare County | >100 | Proprietary |
| South San Francisco Bay P-C Region | 46 | 37 |
| Stanislaus County | 11 | 15 |
| Stockton Lodi P-C Region | 77 | 27 |
| Tehama County | 77 | 49 |
| Temescal Valley-Orange County * | ** | 32 |
| Ventura County (combined Western Ventura County and Simi Valley P-C Regions)* | ** | 34 |
| Western Merced County | >100 | Proprietary |
| Western San Diego County P-C Region | 25 | 17 |
| Yuba City-Marysville P-C Region | >100 | 100 |

* Two P-C Regions have been combined for updated Map Sheet 52
**No percentage due to combining of two P-C Regions

**Table 4.** Percentage of permitted aggregate resources as compared to 50-year demand for Map Sheet 52, 2002 and Map Sheet 52, 2006.

rapidly growing Palmdale area (Northern Los Angeles County) averages about $10/ton. Much of the coarse aggregate consumed in Ventura County comes from the Palmdale Region – a haul distance of about 60 miles. The added cost for such a long haul is about $9/ton. The average cost for sand in Ventura County, supplied from the Simi Valley production region, is about $13-$16/ton – about the same as the greater Los Angeles area. Aggregate price in the Central Valley regions of Northern Tulare County and Fresno County ranges from $14-$18/ton. Aggregate shortages in the Fresno area have resulted in rock being imported into the area from Coalinga, a 60-mile haul. Aggregate prices in the Stockton-Lodi and Sacramento regions run about $10 and $11/ ton, respectively. The price of PCC-grade aggregate in the Yuba City-Marysville region averages about $7-$8/ton – some of the least expensive in the state. Relatively abundant aggregate in this region has kept aggregate prices low.

## Transportation

Transportation plays a major role in the cost of aggregate to the consumer. Aggregate is a low-unit-value, high-bulk-weight commodity, and it must be obtained from nearby sources to minimize both the dollar cost to the aggregate consumer and other environmental and economic costs associated with transportation. If nearby sources do not exist, then transportation costs may significantly increase the cost of the aggregate by the time it reaches the consumer. For straight hauls with minimal traffic, the price of aggregate increases about 15 cents per ton for every mile that it is hauled from the plant. Currently, transporting aggregate a distance of 30 miles will increase the FOB price by about $4.50 per ton. For example, to construct one mile of six-lane interstate highway requires about 113,505 tons of aggregate. Transporting this amount of aggregate 30 miles adds $510 thousand to the base cost of the material at the mine. In major metropolitan areas, this rate is often greater because of heavy traffic that increases the haul time. Other factors that affect hauling rates include toll bridges and toll roads, road conditions, and elevation climbs. Transporting aggregate from distant sources also results in increased fuel consumption, air pollution, traffic congestion, and road maintenance. Moreover, transportation cost is the principal constraint defining the market area for an aggregate mining operation.

## Increased Haul Distances

Throughout California, aggregate haul distances have been gradually increasing as local sources of aggregate diminish. Consequently, older P-C regions, most of which were established in the late 1970s have changed considerably since their boundaries were drawn. This is especially evident in Los Angeles, Orange, and Ventura counties where aggregate shortages have led to the merging of six P-C regions shown on the original map into three regions for the updated map (See *Aggregate Study area Changes* section).

The following lists some examples of aggregate hauls in Southern California that have caused significant transportation price increases:

- The Palmdale P-C Region in Northern Los Angeles County currently exports about half of its aggregate into the adjacent San Fernando Valley-Saugus Newhall Region. Some material from Palmdale also goes to downtown Los Angeles. Coarse aggregate from the Palmdale Region is hauled as far as 60 miles to the Western Ventura County.

compounds. Naturally occurring pozzalonic materials include diatomaceous earth, diatomite, volcanic ash, opaline shale, pumicite, tuff, and certain clays such as kaolinite.

Specifications also call for precise particle-size distribution for the various uses of aggregate that is commonly classified into two general sizes: coarse and fine. Coarse aggregate is rock retained on a 3/8-inch or a #4 U.S. sieve. Fine aggregate passes a 3/8-inch sieve and is retained on a #200 U.S. sieve (a sieve with 200 weaves per inch). For some uses, such as asphalt paving, particle shape is specified. Aggregate material used with bituminous binder (asphalt) to form sealing coats on road surfaces shall consist of at least 90% by weight of crushed particles. Crushed stone is preferable to natural gravel in asphaltic concrete (AC) because asphalt adheres better to broken surfaces than to rounded surfaces and the interlocking of angular particles strengthens the AC and road base.

The material specifications for PCC and AC aggregate are more restrictive than specifications for other applications such as Class II base, subbase, and fill. These restrictive specifications makes deposits acceptable for use as PCC or AC aggregate, the scarcest and most valuable aggregate resources. Aggregate produced from such deposits can be, and commonly is, used in applications other than concrete. PCC and AC-grade aggregate deposits are of major importance when planning for future availability of aggregate commodities because of their versatility, value, and relative scarcity.

## Factors Affecting Aggregate Deposit Quality

The major factors that affect the quality of construction aggregate are the rock type and the degree of weathering of the deposit. Rock type determines the hardness, durability, and potential chemical reactivity of the rock when mixed with cement to make concrete. In alluvial sand and gravel deposits, rock type is variable and reflects the rocks present in the drainage basin of the stream or river. In crushed stone deposits, rock type is typically less variable, although in some types of deposits, such as sandstones or volcanic rocks, there may be significant variability of rock type within a deposit. Rock type may also influence aggregate shape. For example, some metamorphic rocks such as slates, tend to break into thin platy fragments that are unsuitable for many aggregate uses, while many volcanic and granitic rocks break into blocky fragments more suited to a wide variety of aggregate uses. Deposit type also affects aggregate shape. For example, in alluvial sand and gravel deposits, the natural abrasive action of the stream rounds the edges of rock particles, in contrast to the sharp edges of particles from crushed stone deposits.

Weathering is the in-place physical or chemical decay of rock materials at or near the Earth's surface. Weathering commonly decreases the physical strength of the rock and may make the material unsuitable for high strength and durability uses. Weathering may also alter the chemical composition of the aggregate, making it less suitable for some aggregate uses. If weathering is severe enough, the material may not be suitable for use as PCC or AC aggregate. Typically, the older a deposit is, the more likely it has been subjected to weathering. The severity of weathering commonly increases with increasing age of the deposit.

## SUMMARY

Construction aggregate is the largest non-fuel mineral commodity produced in California as well as in the nation. Aggregate production plays a major role in the economy of California. Demand for aggregate is expected to increase as the state's population continues to grow and infrastructure is maintained and improved. For the last 28 years, CGS has conducted on-going studies that identify and evaluate aggregate resources throughout the state. Map Sheet 52 (Updated 2006) is an updated summary of supply and demand data from these studies. The map presents a statewide overview of aggregate needs and permitted resources.

In a five-year period (2001-2005), permitted aggregate resources have decreased by about 2.5 billion tons. Also, during this same period, more aggregate study areas had decreases in permitted aggregate resources than increases. Decreases were caused by changes in permitted resource calculations, aggregate consumption, and social and economic conditions leading to mine closures.

Aggregate price at the plant site and transportation cost have increased significantly in the past five years. Areas throughout the state are experiencing shortages in local permitted aggregate resources and are being forced to transport aggregate longer distances, significantly increasing the FOB cost by the time it reaches its final destination. Areas in very short supply of permitted aggregate resources include Fresno, North San Francisco Bay, Southern Tulare County, and Sacramento County. The shortage of PCC-grade sand in the San Diego and the San Francisco Bay areas has driven up the price in both areas, making importation of sand from Canada and Mexico into these regions competitive.

## CONCLUSIONS AND RECOMMENDATIONS

Construction aggregate is essential to the needs of modern society, providing material for the construction and maintenance of roadways, dams, canals, buildings and other parts of California's infrastructure. Aggregate is also found in homes, schools, hospitals and shopping centers. In 2005, California consumed about 235 million tons of construction aggregate or about 6.6 tons per person. Because transporting aggregate is a significant part of the total cost to the consumer, aggregate mines generally are located close to communities that consume the aggregate.

The following conclusions can be drawn from Map Sheet 52 and this accompanying report. Reference is made to the 31 aggregate consumption areas that are represented by the pie diagrams shown on Map Sheet 52:

- About 32 percent of the total projected 50-year aggregate demand identified for the 31 study areas is currently permitted.
- Only six percent of the total aggregate resources identified within the 31 study areas are currently permitted.
- California currently has about 4.3 billion tons of permitted resources identified in the 31 study areas shown on Map Sheet 52.

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April 6, 2009

GRANITE CONSTRUCTION COMPANY Lic. No. 89 Since 1922

County of San Diego
Department of Planning and Land Use, MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

Re: Comments on the Draft North County MSCP
Granite Construction Company / APN 102-230-66

Dear Sir or Madam:

Granite Construction Company ("Granite") is under contract to purchase the above referenced parcel and writes to provide comments on the County of San Diego's Draft North County MSCP ("Plan"). For the reasons outlined below, Granite respectfully requests that the above three (3) acre parcel be removed from the Plan's proposed pre-approved mitigation area designation.

As noted on the attached map, the parcel is located immediately adjacent to Interstate 15. The site's proximity to this heavily traveled regional transportation corridor and its corresponding noise, light and air impacts results in a substantial reduction in the parcel's overall habitat value. The parcel is also bisected by an existing paved access road, which further contributes to the site's relatively disturbed condition.

In addition to these significant direct and indirect impacts, the parcel's location at the extreme northern edge of the Plan Area also diminishes its value as a habitat linkage. Moreover, inclusion of the parcel does little to contribute to the Plan's overall preservation strategy of establishing large, contiguous preservation areas.

Finally, the parcel serves as the only access point for approximately 501 acres of privately owned land in Riverside County including land proposed for Granite's proposed Liberty Quarry project, which is currently under review by County of Riverside. The Liberty Quarry project, which will necessitate further expansion of the existing access road, will provide substantial benefit to San Diego and Riverside Counties and their residents by providing an economical, reliable and environmentally superior source of construction grade aggregates to meet the Northern San Diego County regions ever growing demand. San Diego Gas and Electric also use the existing paved access road on this parcel to access and maintain a high voltage power line.

For the reasons outlined above, Granite respectfully requests that Draft North County MSCP be modified to identify APN 102-230-66 as being located "outside" of the Plan's pre-approved mitigation area. Should you have any questions or require any additional information please contact our office at 760-775-7500.

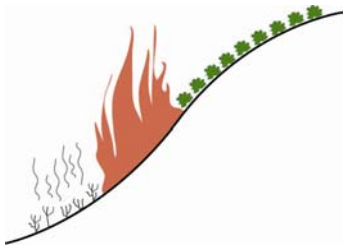
Sincerely,

Gary W. Johnson
Aggregate Resource Development

Southwest California Office
38740 Sky Canyon Drive, Suite C
Murrieta, CA 92563
951/304-9283
FAX: 951/304-9486

# The California Chaparral Institute

*…the voice of the chaparral*



April 6, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Road, Suite B
San Diego, CA 92123

**Re: North County MSCP Draft**

Dear MSCP Review Committee:

After more than five years of intense effort by many of the most prominent fire scientists and ecologists in Southern California, we were hopeful that San Diego County would have the necessary background to incorporate a modern understanding of fire into its conservation land planning process. Unfortunately, we have found many of the same misunderstandings about fire as it relates to shrubland ecosystems in the current North County MSCP document as have been present in previous county reports. These errors have been pointed out to the county innumerable times through comment letters and public testimony (2/5/04: Wildland Fire Task Force Report, 1/09: Vegetation Management Report/Planning Commission hearing, 3/25/09: Expert testimony on Vegetation Management Report for the SD County Board of Supervisors).

These errors may be the result of the significant amount of time that has lapsed since the MSCP document's Independent Science Review. It was completed in 2001 (Appendix C). Since that time there have been 6 huge wildfires that have scorched a significant portion of the county, dramatically changing region's ecological landscape (the 2007 fires were one of the reasons given for the need to complete a supplemental draft EIS in 2008 for the Sunrise Powerlink). In addition, there has been a tremendous amount of scientific research that has changed our understanding of chaparral ecology, the impact of fires on shrubland ecosystems, and the impact of global climate change.

However, we are concerned that the fire related errors contained within the MSCP document may still reflect the county's adherence to an outdated paradigm that incorrectly views chaparral as an ecosystem that "needs" active management to maintain its ecological health, is resilient to nearly any vegetation treatment, and is more of a fire threat than a valuable natural resource.

For example, on March 19, 2008 a "Wildfire Issue Paper" was presented to the East County MSCP Steering Committee meeting that repeated many of the same misconceptions found within the current North County MSCP document. We have attached a review of this Issue Paper at the end of our comment letter.

To prevent the continued perpetuation of these misconceptions about fire in shrubland ecosystems within the North County MSCP we urge San Diego County to take the following steps:

1. Correct the errors regarding chaparral ecology and fire as listed below.

2. Conduct a supplemental Independent Science Review of the North County MSCP document specifically relating to shrubland ecosystems and fire.

3. Since the largest vegetation type addressed by the North County MSCP is chaparral, it is imperative that the new Independent Science Review committee include chaparral ecologists, fire scientists, and watershed experts who have a thorough understanding of shrubland ecosystems. This review committee also needs to have the ability to assemble itself independently of county's process.

4. Recognize that the condition of shrubland ecosystems in San Diego County is constantly changing, especially in light of shortening fire return intervals. This fact requires the county **conduct CEQA reviews of any future fire management activities at the project level**, not as part of the CEQA review for the entire MSCP as the county now proposes. Increasing fires and changing climatic conditions will make older CEQA reviews irrelevant.

5. Withdraw the Wildfire Issue Paper presented to the East County MSCP Steering Committee.

We were encouraged that the county removed most of the misconceptions about fire and shrubland ecosystems in the final copy of the Vegetation Management Report that was adopted by the Board of Supervisors on March 25, 2009. We urge the county to continue this process by updating the fire science in the current North County MSCP document.

Sincerely,

Director

cc: Rory Wicks, Coast Law Group

**The following errors/misconceptions concerning fire and chaparral ecology need be corrected in the current North County MSCP Draft:**

**MAIN TEXT**

**4.5.2 Fire Clearing (pg 33)**

> "Typical clearing for fire safety is up to 100 feet from a home, which amounts to approximately one acre (200 by 200 feet). Additional clearing (approximately one acre) will also be required along driveways and roadways, and for accessory structures such as sheds, barns and corrals. This means that about two acres are normally required to accommodate fire safety around a typical home in the unincorporated area."

**Needed Corrections:** The word "clearing" should be eliminated from this entire document and be replaced with the word "thinning." The importance of this change is evidenced by the large number of parcels throughout the county that have been "cleared" down to bare mineral soil or have had natural habitat areas unnecessarily damaged. The word "clearing" is taken literally by many citizens and they act accordingly. Numerous individuals emphasized this problem in their testimony during the January 5, 2009 San Diego County Planning Commission Hearing.

> "Homeowners should also incorporate fire hardening principles to all dwellings."

**Needed Corrections:** Fire hardening of structures is an essential component of fire risk reduction and we are pleased that the county included it in the document. However, it must have a greater emphasis. We suggest the following wording: "It is essential that homeowners understand that the thinning of vegetation alone will not protect their homes from fire since embers can travel a half-mile or more from the fire front. It is strongly recommended that in addition to the required vegetative thinning that homeowners incorporate fire hardening principles to all dwellings and use fire resistant landscaping."

> "If none of the projects currently in process or any additional projects were ever developed, and all parcels were cleared to the maximum extent allowed by General Plan density and the exemptions under this plan, the clearing could result in the impact of up to 19,000 acres (13,000 acres within PAMA and 6,000 acres outside) of natural habitats within the Plan area…Impacts to natural vegetation have been calculated for the Plan area and will be mitigated for with County contributions to the preserve assembly. Habitat losses will be tracked in HabiTrack for clearing associated with new permits."

**Needed Corrections**: The responsibility for habitat loss monitoring needs to be clarified and properly funded. There is no explanation for what "HabiTrack" is or how it will be used. This term needs to be clarified. The problem of proper tracking of habitat destruction has been illustrated by the lack of accounting for the loss of coastal sage scrub in the South County Subarea Plan. Although defined limits for loss were set, no agency has kept track of that loss.

**8.5.1 Repetitive Fire (pg 114)**

> "For the purpose of defining Changed Circumstances, repetitive fire is defined as fire occurring in the same location as a previous fire three times in a 10-year period and causing repeat damage within preserves to 10 – 100 acres of riparian habitat and/or 200 – 1000 acres of coastal sage scrub. Repeat fire on more than any of the maximum amounts above, would constitute an Unforeseen Circumstance."

**Needed Corrections**: This definition needs to be eliminated entirely and replaced with one based on the most recent scientific literature. **It must also include the impact of repetitive fire on chaparral plant communities.** The absence of such a reference is curious since chaparral arguably represents one of the most threatened plant communities by repetitive fire in the county. While there is not a lot of research concerning the response of coastal sage scrub to changing fire regimes, there is a significant amount of research that demonstrates chaparral can be threatened by fire return intervals greater than once every 15-20 years. In fact the Independent Science Review within this MSCP document notes this fragility. It states,

> Appendix C, pg. 20: "…fires that are too frequent can have a detrimental effect on their long-term viability. **Fire return intervals of 5, 10, or even 20 years could eliminate some of these plant populations within the planning area.** To abate this threat, we suggest that the County work with state/local fire agencies to develop ecological fire management/suppression plans that identify protection measures for known rare plant populations and other sensitive resources when wildfires occur."

Please see Addendum for additional information and references on this matter.

**Risk Assessment (pg 115)**

> **"**Fire is an important natural disturbance within the Plan area that promotes vegetation and wildlife diversity, releases nutrients, and eliminates heavy fuel accumulations that can lead to catastrophic burns."

**Needed Corrections**: The MSCP document needs to acknowledge that while natural fire regimes were an important evolutionary force that helped shape chaparral plant communities in the past that is no longer the case. Natural fire regimes no longer exist in Southern California because nearly all fires today are anthropogenic. Such fires threaten the existence of many threatened and endangered species as well as entire ecosystems. This is acknowledged throughout the document including the quoted statement below. What is critical now is to develop a plan to reduce fire frequency through appropriate development plans, increased fire prevention and suppression efforts, and public education. Please see Addendum for additional information and references on this matter.

> "However, certain repetitive fires within the same location of the preserve may adversely affect the Covered Species due to degradation of natural habitat(s) to those dominated by invasive or non-native weeds. This is generally a greater concern for coastal sage scrub habitats, which regenerate mainly by seed. Many other chaparral habitat types regenerate by resprouting and therefore are not as prone to this shift in species dominance."

**Needed Corrections:** The last two sentences of this section are not supported by current research and are in fact opposite to what is known. Coastal sage scrub plant communities generally respond to fire by resprouting and do not have any dominant obligate seeding shrubs. In contrast, many of the dominant shrub species in chaparral are obligate seeders and will in fact disappear with repetitive fires (e.g. many ceanothus species, all but a few manzanitas, bush poppy, etc.). While coastal sage scrub is definitely threatened by increased fire frequency, it generally has a higher tolerance for fire than do chaparral plant communities.

**APPENDIX G: Framework Resource Management Plan**

**2.3 Fire Management (pg 5)**

> "Fire Management for ecosystem and species health will also be considered in the development of ASMDs."

**Needed Corrections:** There is absolutely no scientific support for using fire management techniques, be it prescribed burning or mastication, to "improve" species or ecosystem health in shrubland ecosystems. This issue was addressed during the evaluation period of the county's Vegetation Management Report (VMR). Dr. Jon E. Keeley made the point clear when he commented on the VMR in a letter on 2/5/09. He wrote,

"All references to using fire for ecosystem health must be explicit about the fact that this refers only to forests. Our subcommittee was quite clear on this issue. **I cannot support San Diego County justifying the burning of chaparral or sage scrub on the grounds that it will enhance ecosystem health.** The only justification is fire hazard reduction."

**3.4 Vegetation Management (pg 17)**

> "Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD. Vegetation management activities are covered under the Plan and lead to ecosystem health, resiliency, and fire safety."
>
> "Each Ecosystem Health Plan will be prepared using the guidelines in Section 4 for the particular vegetation communities in mind."

**Needed Corrections:** Again, any reference to ecosystem health needs to specify this applies only to forested systems, not shrubland ecosystems.

**Table 7, Fire (pg 22)**

**Need Corrections:** This entire Table needs to be updated with the most recent scientific information regarding chaparral. In its present form, it supports the need to use fire and other active management strategies in shrubland ecosystems that have the potential of causing significant harm.

> "Chaparral communities are adapted to natural fire regimes."

As mentioned earlier, a clear distinction needs to be made that anthropogenic fire is now the controlling, and threatening, factor in chaparral plant communities.

> "These communities support different assemblages of plants at each stage of development – "fire following" annuals and animals that prefer open areas in early stages and "old growth" and cryptic species in later stages – therefore, maintaining a variety of age classes is important to maintain these characteristic species assemblages."

There is strong evidence that the natural condition of chaparral in Southern California is large, continuous stands of vegetation, not a "mosaic" of age classes. An in depth discussion of this issue with references can be found on our website at:

http://www.californiachaparral.org/firescience.html

Consequently, it would be inappropriate to attempt to create an artificial "variety of mixed age classes" because as the Independent Science Review states on page 5 (Appendix C),

> "In any case, the diversity sought should be natural habitat diversity, **not an artificially enhanced diversity, which is likely to increase fragmentation and favor weedy species.**"

The following sections in Table 7 also do not reflect what we now understand about fire in chaparral plant communities. References for additional information on this subject can be found on the webpage listed above.

| Current MSCP Document | Comments/Corrections |
|---|---|
| ---Large and/or rapidly spreading fires can impact natural communities. Large fires can kill more animals than small or moderate fires since there are fewer opportunities to escape. Species not well adapted to post-fire landscapes may have difficulty finding refugia or repopulating large burned patches. | Large and/or rapidly spreading fires are the natural condition for Southern California shrublands. What is not natural is the increased fire frequency due to anthropogenic fire. |

| Current MSCP Document | Comments |
|---|---|
| --Erosion is often increased after fires due direct exposure of soil to the elements. Erosion and runoff may also be accelerated in some areas due to altered chemical properties of the soil from exposure to extreme temperatures, reducing the organic content of the soil among other changes. | Hot, extreme fires are a natural condition during chaparral fires. In fact, it has been demonstrated that such fires are essential for the proper recovery of chaparral ecosystems. |
| ---In some cases prescribed fires may be used as a form of habitat management. | Again, this may be appropriate in forested ecosystems, but not chaparral. |
| ---Fire history maps maintained by CALFIRE should be reviewed at least once every 10 years to determine if preserve lands are within natural fire return intervals & for estimation of fuel age class. | This implies that there is an upper limit at which chaparral "needs" to burn to maintain its "natural fire return" interval. Such a view point fails to recognize that chaparral in Southern California is not threatened by not enough fire, but rather too much. Please see additional information and references on this topic at the webpage listed above. |

# Addendum

**Review of the Wildfire Issue Paper issued during the March 19, 2008 East County MSCP Steering Committee meeting.**

We are requesting that this Issue Paper be withdrawn from the MSCP process because of faulty assumptions about fire and the failure to make important distinctions between forests and shrubland ecosystems. Such errors will likely lead to inappropriate land management practices for MSCP lands throughout the county.

The Issue Paper makes a fundamental error when it states,

> Fire and other related disturbances must be allowed to play their natural roles in the ecosystem if vegetation communities are to remain viable.

The Paper also appears to focus primarily on forested ecosystems that can tolerate frequent, low intensity fires. It fails to recognize that chaparral, the county's dominant ecosystem, is adapted to infrequent, high intensity fires. Large, old-growth stands of chaparral are natural, healthy communities, not artifacts of past fire suppression activity.

Artificially applying the wrong kind of fire at the wrong time to chaparral or other shrubland ecosystems will ultimately lead to their replacement by non-native weeds.

The Paper inaccurately states that fires in the past,

> …burned primarily during the summer monsoon season and were limited when they encountered fire resistant young vegetation" and that "The fire regime has shifted from one of frequent small (1,000-5,000 acres) summertime fires to infrequent large fires occurring in the fall under Santa Ana wind conditions.

Such statements appear to be based on out-dated research that has been rejected over the past twenty years by numerous scientists. San Diego County is no stranger to large wildfires. The newspaper article below describes the impact of a large fire in the Cuyamaca Mountains in 1889:

> LOS ANGELES TIMES. Sept 29, 1889: San Diego County. Great devastation by fires in timber lands. Flames fought night and day by men and women---still raging in Cuyamaca Mountains.
>
> SAN DIEGO, Sept. 28.---[Regular Correspondence.] The forest fires in the mountains of this county, which have been raging for the past two weeks are the worst fires known here. Reports today from Palomar Mountain give graphic descriptions of the great devastation of timber in that beautiful park region. Men and women have been fighting fire day and night, many going two or three days without food or sleep. About five miles square of the choicest timber lands of Smith Mountain (Palomar Mountain) are utterly destroyed, and many settlers had to fight bitterly to save their houses. Many cattle are known to have been burned. Deer, snakes and mountain lions have been driven down to the settlements. The fire is now partially under control, though those burning on the Cuyamaca Mountains, twenty miles south, are still raging.

Large fires have always been part of the landscape of Southern California (Mensing, et al. 1999) and will likely continue to occur. The difference now is that they are coming more frequently due to human caused ignitions. USGS research indicates that fire suppression and fuel build up are not responsible for shrubland fires in Southern California, but are driven by ignitions and severe fire weather (Keeley et al. 1999; Keeley and Fotheringham 2003).

The Wildfire Issue Paper later states that,

> Fires in chaparral less than 20 years of age are rare…For fires over 10,000 acres in San Diego County, the average vegetation age at the area of origin is 60 years. Conversely, fires have started under extreme weather conditions in four year old chaparral with only limited spread.

These statements are contrary to what has occurred in San Diego County during both the

2003 and 2007 firestorms. Approximately 70,000 acres that burned in the 2007 fires had burned in the 2003 fires. The vegetation was "four-years-old" and represented about 20% of the total area burned.

In another section, the Paper claims,

> Maintaining a patchwork of different aged vegetation areas by integrating mechanical clearing, biological clearing, and prescribed burning can limit wildfire size and intensity, while improving biodiversity.

The age of vegetation (time since last burned) does not have a strong relationship to hazard of burning. Analysis of several hundred fires over a broad expanse of California shrublands has demonstrated that extreme weather conditions (Santa Ana winds) overwhelm the influence of the age and spatial patterns of fuels (Moritz 2003; Moritz et al. 2004). This has also been demonstrated in Australian shrublands (Bradstock and Gill 2001; Whelan 2002). Such fires can burn easily through 5-10 year old stands (Dunn 1989). A study of the 1985 Wheeler fire in Santa Barbara County concluded that only 14% of the fire perimeter was established due to wildland fuel type changes (Dunn and Piirto 1987).

As mentioned above, the inability of younger age classes to stop a fire was also shown during both the 2007 Witch and Poomacha fires in San Diego County. In addition, hundreds of acres of overgrazed pasture land in Pamo Valley burned during the Witch fire despite the fact that very little vegetation was present.

> *"The extent to which landscape level fuel treatments are effective is a function of weather conditions during the fire event. Under extreme weather conditions, there is overwhelming evidence that young fuels, or even fuel breaks, will not act as a barrier to fire spread" (Keeley et al. 2004).*

Regarding the use of a "patchwork of different aged vegetation" to limit wildfire size, US Forest Service researchers Susan G. Conrad and David R. Weise (1998) concluded after an extensive examination of the literature that,

> *While an age-class mosaic could be effective at moderating fire intensity in young stands, and for making fires more amenable to control, especially under moderate burning conditions and on the flanks of a fire, it is important to recognize that a high-intensity fire will typically burn through any age class of vegetation. And as discussed earlier, these are the fires that burn most of the acreage.*

To achieve their goal of creating a strategic approach to fuel and fire management in chaparral Conrad and Weise concluded that, "**landscape mosaics are impractical, unnecessary, and probably not particularly effective."**

Regarding prescribed burning the Paper claims,

> Limiting the size and intensity of fires through planned burning during moderate weather conditions will reduce such adverse effects following fire.

Unfortunately, prescribed burns frequently do not turn out as expected. A five acre prescribed burn turned into a 10,000 wildfire at the northern tip of the Cleveland National Forest in Orange County on February 6, 2006. Fortunately no lives were lost or structures destroyed. Such was not the case when a prescribed burn escaped May 2000 in northern New Mexico. It started the Cerro Grande fire, burning 47,650 acres and destroying over 350 homes (Griggs, et al. 2001).

There is no question that prescribed burning is an important tool. Many fire management agencies already use a combination of prescribed burning and other fuel management techniques to reduce fuel loads in a *strategic* manner near communities and other valuable assets. First hand firefighter experience has proven that younger fuels do provide opportunities to suppress fires if they are found in *strategic* locations, namely where there would be an opportunity for successful fire suppression activities (Halsey and Keeley Fire Management Today in press). However, given the high cost and risk of prescribed burns, they need to be restricted to strategic locations as they presently are, not applied broadly across the landscape in MSCP lands.

Finally, the Paper appears to view chaparral as an invasive pest rather than the important ecosystem it is.

> Cuyamaca Rancho State Park is in serious jeopardy of becoming a chaparral and oak woodland since the Cedar fire destroyed over 90% of the pines, cedars, and firs in this area. Without seed trees, conifers will need to be planted and chaparral controlled.

While protecting our forested ecosystems is important, it is critical to understand that native ecosystem succession is a natural process. Efforts to "speed-up" reforestation in Cuyamaca and "control" chaparral may lead to ecosystem degradation in the long run. Ceanothus, one of the chaparral species currently dominating the post-fire environment in Cuyamaca, is an important nitrogen fixing organism. If the plant is removed as some suggest in order to make way for artificially seeded trees, the natural process of nitrogen fixation will be interrupted and the soil will be less capable of supporting a healthy ecosystem, forested or otherwise.

We are hopeful future MSCP documents relating to fire will reflect the most current science and make important distinctions between ecosystems.

Sincerely,

Richard W. Halsey
Director
The California Chaparral Institute

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JWA J. Whalen Associates, Inc.

Balancing the needs of the environment with those of business.

April 6, 2009

Mr. Tom Oberbauer
County of San Diego MSCP
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RE: North County MSCP Plan and APN 276-100-40

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Dear Mr. Oberbauer:

This letter is regarding a 53.11 acre property on Highland Valley Road in west Ramona that is owned by the Gildred family. We represent the owners of this property, the Gildred Development Company, who are currently proposing a TPM for the property. It is not the same property as the Gildred family ranch, which was recently sold for open space, but is contiguous with the 1,100 acre Gildred ranch on its western boundary. (See attached figure).

In the County of San Diego's proposed North County MSCP Draft, a portion of this property is depicted as part of the Pre-Approved Mitigation Area (PAMA). We do not feel that this property is appropriate for placement into the PAMA, as its biological and geographical features do not meet the standards for placement into the PAMA.

The property is located to the north of the Poway-Ramona linkage, and is contiguous with existing rural development to the south and west, as well as Highland Valley Road. The Poway-Ramona linkage is south of the subject property, and trends westerly from there into the Lake Ramona area, and thence to Poway.

The Santa Maria Creek drainage to the north of the property is not currently shown as a PAMA in the NCMSCP because it is in the MSCP South plan area. This area is the key linkage between the Ramona Grasslands, Santa Maria Creek, and San Pasqual Valley and should be the subject of planners' attention, not the Gildred's former avocado grove. This area is already largely preserved, either by the County or the City of San Diego, until it hits the Fenton Ranch property offsite to the north. (Fenton Ranch is in discussions which could lead to preservation of key areas for open space.)

The Gildred Development Company property was severely burned in the 2007 Witch Creek Fire, and about 50% of the trees in agricultural area were lost at that time. These trees have not been replaced and will not be, first as a way to save water, but also to prepare for the proposed TPM, which will not need so many trees. As a result, what may have appeared to be an agricultural area conducive to wildlife movement that also provides food and cover no longer possesses those properties. Because of this, it should not be designated as PAMA.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact our office.

Very truly yours,

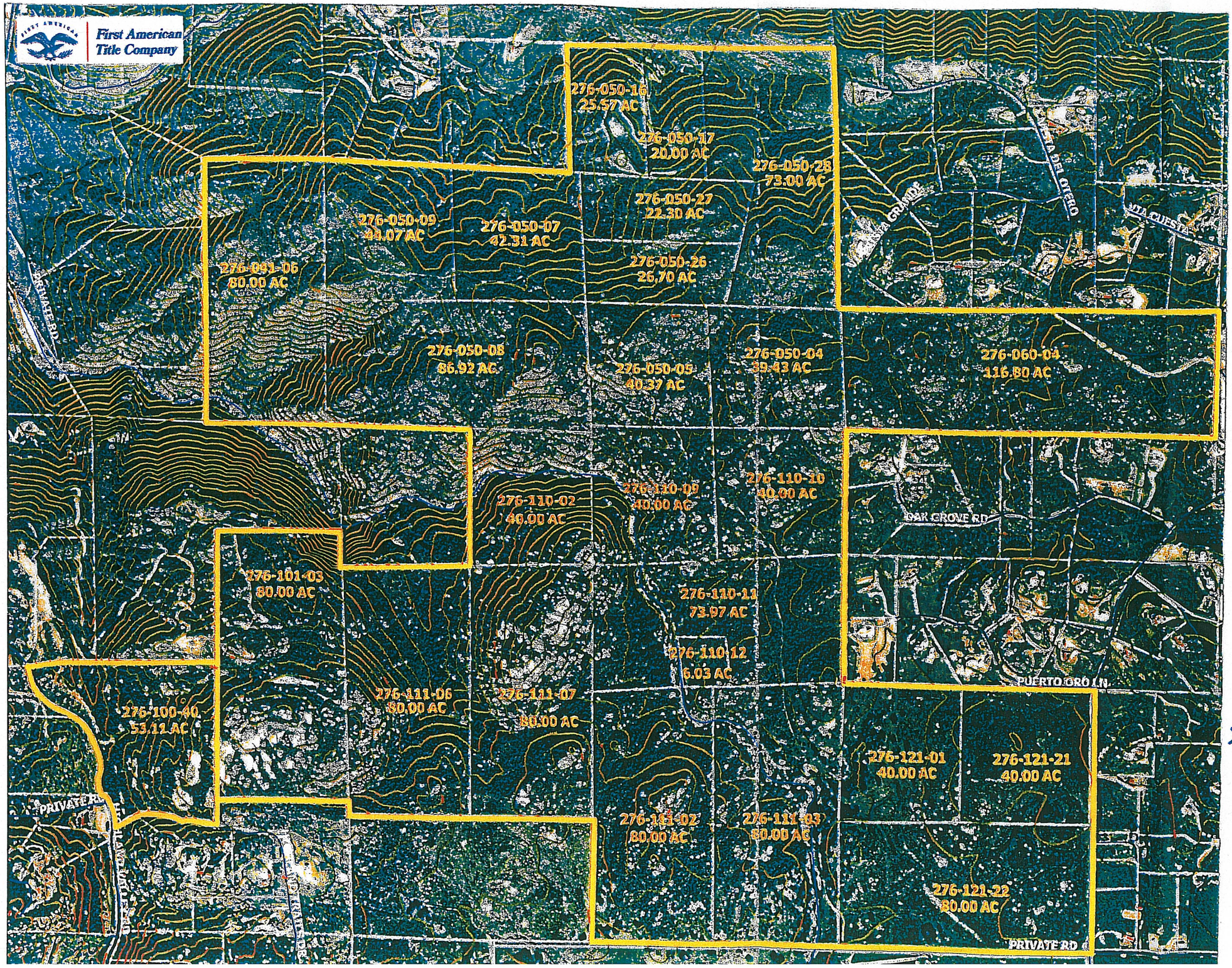
J. Whalen Associates, Inc.,
a California corporation

By: James Whalen
President

cc: Gregg Haggart,
Gildred Development Company

Attachment

# GILDRED RAMONA RANCH




Legend

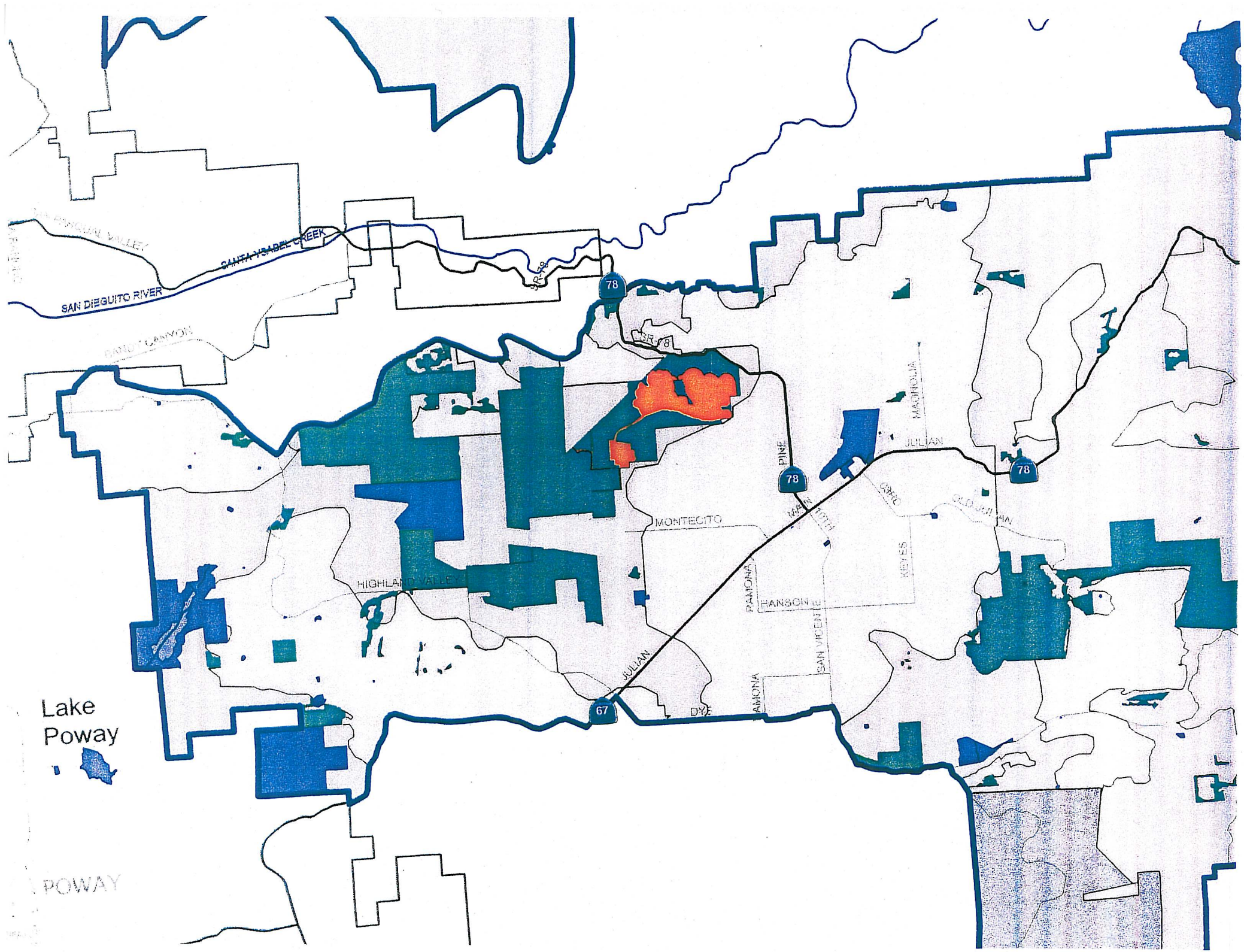
- Topography
- Rivers
- Roads
- Parcels

N
W E
S

0 500 1000 1500 2000 2500 Feet

COMPLIMENTS OF

First American Title Company


SAN DIEGUITO RIVER
SANTA YSABEL CREEK
78
SR-78
MONTECITO
HIGHLAND VALLEY
JULIAN
PINE
MAGNOLIA
RAMONA
HANSON
KEYES
SAN VICENTE
DYE
67
Lake
Poway
POWAY

J. Whalen Associates, Inc.

Balancing the needs of the environment with those of business.

April 6, 2009

Mr. Thomas Oberbauer
MSCP Chief
County of San Diego
5201 Ruffin Road, Suite B
San Diego, California 92123

1660 Hotel Circle North

Suite 725

San Diego, California

92108-2820

619.683.5544

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RE: MSCP North County Comments for Palomar Community College

Dear Tom:

Our firm represents the Palomar Community College District, which is planning to begin construction of their new satellite campus in the coming year in the Fallbrook community. The property is a roughly 80-acre site which is bounded by I-15 on the west, a large riparian area on the south, and the Campus Park and Meadowood properties to the east. (See map, attached.) The District, which as you know is a public agency with land use authority, nonetheless has committed in writing to work with the County of San Diego on habitat planning issues, and is pleased to provide you with these comments on the draft MSCP North habitat conservation plan.

Palomar College wishes to work closely with the County to ensure its site planning and open space dedications facilitate the completion of the MSCP plans on a regional scale. The District started on this effort in late 2008, with its purchase and dedication of about 90 acres of coastal sage scrub, chaparral, and non-native grassland in the critically important linkage between the San Pasqual Valley and Ramona Grasslands at Fenton Ranch. This purchase "jump-started" the proposed acquisition of the majority of the Fenton Ranch's natural lands. The U.S Fish & Wildlife Service, California Department of Fish & Game and as you know, the County, have signed off on this mitigation for upland impacts, and the land is now under management by the San Dieguito River Park.

As the District moves into its next phase of planning and development for the new satellite campus, wetland permitting has come to the fore. While the applications have not been processed yet by the U.S. Army Corps of Engineers and the California Department of Fish & Game, the District intends to provide both onsite and offsite mitigation within the PAMA. It

is expected that substantial areas of restored wetlands will be acquired offsite and dedicated onsite to permanent preservation as biological open space. We hope to gain the support of the County, as well as the other agencies with approval authority, as we move through the 404 and 1602 processes in the coming year.

Here are our comments on the draft MSCP Plan:

Plan Page 21, 1st Paragraph after end of last sentence, add: "Palomar Community College, whose site is not a part of this plan, is planning an auxiliary campus which will add significant open space to this corridor"

Plan Page 22, after 3rd paragraph, add a new Paragraph: **Other Areas**. Certain areas of habitat may not be under the jurisdiction of the County, but could contribute to the overall preserve, such as land owned by public agencies, tribal governments, and utilities which may be permanently preserved."

Plan Page 25, 4th Paragraph. School Districts. Last line add: "However, planning activities by Palomar District are intended to mesh with the MSCP Plan and contribute to the overall preserve system when those plans are completed through the dedication of a conservation easement on those areas to be permanently conserved, both onsite and offsite."

Plan Page 39, Table 5.1. Preserve Assembly Overview- Non-profit organizations (estimate) cut "500" and replace with "600". Discuss: "Palomar College intends to add approximately 100 acres of preserved and/or restored uplands and wetlands to the North County MSCP Preserve."

Plan Page 43, 1st Paragraph add: "Further, the Palomar Community College District will be providing open space in a critical preserve area in the Ramona area, as well as permanent management."

Plan Page 127, 8.6.3. Participation by Special Districts. Reference 1st pargh. "Although not subject… as applicable." Discuss: It is not clear whether satisfying the terms of consultation can occur independently of demonstrating substantial conformance to the plan. It should be possible to do so since complying with the Plan isn't the only way to achieve approval of agencies.

**Appendix E:**

Pg 3, First sentence, discuss adding: ", especially when combined with the adjacent Palomar College onsite open space dedication areas."

Pg 4, Figure 1 – Discussion: This can be deleted, was formerly a road alignment for a road not being built. Please see drawing, marked up.

Pg 8, Reference "Horse Creek Ranch Road" - add "s" at the end of project and insert as follows: “hardline projects", or on the Palomar College Site)"

After you have had a chance to review the foregoing, we would appreciate the opportunity to go through with you and your team. Should you have any questions before that time, please do not hesitate to call me.

Very truly yours,

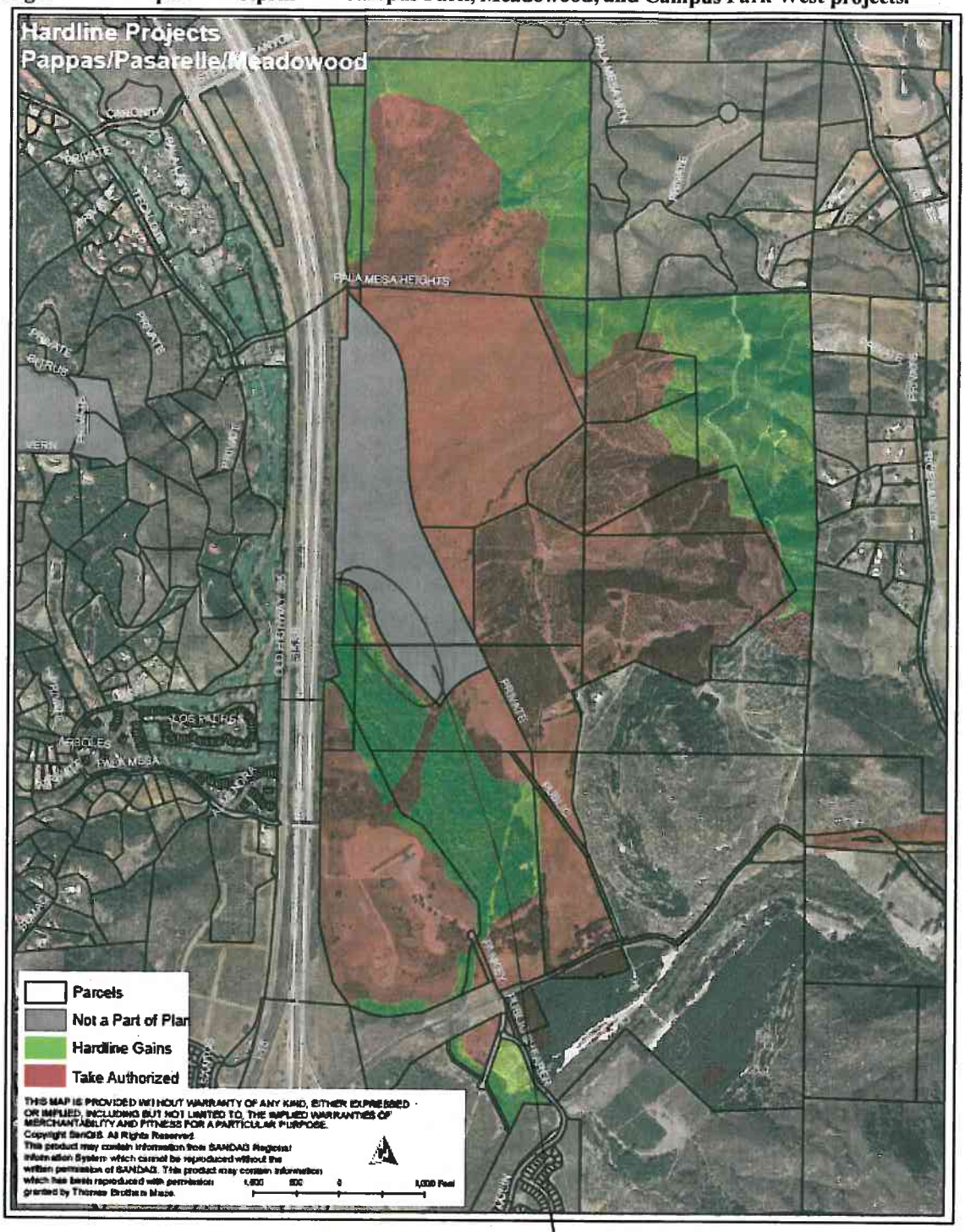
J. Whalen Associates, Inc.,
a California corporation

By: James Whalen
President

cc: Bonnie Dowd, Palomar CollegeGildred Development Company
Paul Metcalf

Attachment

**Figure 1. Development footprint for Campus Park, Meadowood, and Campus Park West projects.**




delete road alignment

J. Whalen Associates, Inc.

Balancing the needs of the environment with those of business.

April 6, 2009

Mr. Tom Oberbauer
County of San Diego MSCP
5201 Ruffin Road, Suite B-5
San Diego, CA 92123

RE: North County MSCP Plan General and Detailed Comments

Dear Tom:

1660 Hotel Circle North

Suite 725

San Diego, California

92108-2820

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619.683.5585 FAX

www.jwhalen.net

Thank you for the opportunity to review the Draft North County Multiple Species Conservation Program developed by the County of San Diego. I have attached to this letter a matrix of editorial comments and edits for the document. General issues of concern are also contained within this letter. They are significant enough that I believe they warrant a meeting with a small group to review them and decide next steps. Some of them are serious enough as to warrant a reappraisal of whether it makes sense to continue with the MSCP North Plan. The North Plan should not be so different from the existing, approved MSCP South Plan.

General Comments:

Plan Page 23 3.2.7. History of Preserve Design. 5th pargh. 3rd line Questioning:"2000 feet" -"This is "1000' wider than the MSCP standard, why the change? Is MSCP planning standard no longer the optimum? 400' has been the standard narrowest width."

Plan Page 42, County RPO Open Space Easement. 6th line. DISCUSS: reference line 6 "any remainder of steep slopes….other project mitigation." If County wants to have excess mitigation count as a match, it can't take this position. Also, inconsistent with Conservation subdivision

Plan Page 51, 5.3.5. Private. 7th line Reference "Resource Management Plan" Discuss: Why is this new term used? Use language consistent with other MSCP and MHCP Plans.

Plan Page 65, 6.3.1. Species Not covered… 3rd pargh. Significant Issue: This has been abused in the past as a way for the County to get extra mitigation by going around the supposedly comprehensive MSCP. Need to clarify that when a habitat type is "sufficiently" or "adequately" conserved, then no additional mitigation can be sought. (Example of that would be CSS species in CSS habitat are generally covered.)

Plan Page 67 1st pargh. Reference line: Impacts outside of the PAMA....within the PAMA. Discuss: If this is so, then almost all mitigation would be offsite and all properties outside the PAMA should be 100% developed to create most offsite land acquisition.

Plan Page 67 2nd pargh. Reference: On-site conservation will ....narrow endemic species.) Discuss: This Policy is inconsistent with MSCP.

Plan Page 68 7.2.1. Habitat-Based Mitigation Reference 1st pargh., as well as entire section: DISCUSS: This policy ignores the reality of land ownership. Not everyone can do this. Need to provide for same approach as in existing MSCP.

Plan Page 69 2nd pargh. In-kind mitigation DISCUSS: Out-of-kind mitigation is ok (with intent language at least.)

Plan Page 69 2nd pargh. In-kind mitigation Reference: 7th line Wetlands also require in-kind mitigation DISCUSS: wetland functions & values can be maintained using different types of wetlands.

Plan Page 76 2nd pargh. 4th line Reference end of 4th line. DISCUSS: The County is completing a pilot Special Area Management Plan (SAMP) which will streamline Army Corps permitting in the Otay River watershed. If this SAMP is approved and proves worthwhile to augment with other watershed SAMP's in other parts of the County, the County will replace its wetland regulations with those in the SAMP's, where a SAMP is applicable.

Plan Page 83, 7.4.3 whole section - This could lead to 100% of a property being kept from development. Need to have a minimum percentage of any property that can be developed. Suggest 25% per PAMA.

Plan Page 105, 2nd pargh. Beginning 11th line to end of pargh. - Who's talking to Coastal staff? They can make approval difficult since the MSCP mitigation policy conflicts with Coastal policies.

Plan Page 107, 8.2.1. Take Authorizations for Covered Species – Reference 4th line "while Take Authorization...California gnatcatcher (58 FR 65088)." - Why not Section 10? Once MSCP North is finished, What happens to the 4(d) Rule? Does it get confined to only participating MSCP incorporated Cities? How can that work when County's 5% is now subject to a Plan?

Plan Page 108, 1st pargh.- Need to add a paragraph describing "Significantly" and " Sufficiently conserved" habitat types.

Plan Page108, 3rd pargh. Reference 5th line - "Beneficiaries" ~ participant changes the meaning of the word.

Plan Page 110, 2nd pargh. 4th line from end of pargh. – Reference "consistent with other agency priorities" – Meaning never? We need to come up with good findings that moot any claim by CBD that HCP's don't mitigate CHD impacts.

Plan Page 113, 4th pargh. Reference line-"except for those projects….exempt from such assurances." Is an example of this a Section 7 with the Corps?

Plan Page 125, 8.6.1 2nd pargh – Reference Lands annexed prior to the adoption of this Plan are not subject to the above requirements, so long as they were addressed in the HCP/NCCP Plan prepared by the jurisdiction to which they were annexed. Discuss: or other legal mechanism for addressing protection of linked species.

Plan Page 125, 8.6.1, Annexations by Other Jurisdictions – Discuss: Please explain and provide basis for this section.

Plan Page 129, 9.1 Title – Reference: Resource (in FRMP) instead of Habitat, Discuss: The name change will confuse and is unnecessary.

Plan Page 131, 9.2 last sentence – Reference: Removal of these invasive plant species will generally be required as part of initial stewardship activities, subject to a case by case review. Discuss: This can be a no-win with weeds.

Plan Page 133, 9.3.1, Preserves, Lines 4 thru 7 – Discuss: Cost of this can be burdensome to the point of project-killer if overly broad scope.

**Appendix A:**

Pg 10, 86.517 (a) - Discuss: add under project design, it is the intent of this section to provide for flexibility in design standards, etc.

Pg 12, 86.517 (d) whole section – Discuss: Replace with MSCP language. It has worked well and is not vague.

Pg 13, 86.518 a) (4) & (5) – Discuss: paragraphs 4 & 5 are not consistent with MSCP

Pg 16, 86.519 ( c) (6) – Discuss: This is subject to a abuse of discretion.

**Appendix C:**

Discuss: General Comment: To the extent possible, the Implementing Agreement for the original plan(s) should be used. Much of the benefit of doing these plans has been eliminated, and in significant increments.

**Appendix E**:

Pg 1, Pargh 1 – Reference "All projects must comply with all applicable County ordinances and analyze a full range of alternatives under CEQA." Discuss: CEQA review will not be used to exact additional biological resource mitigation from project proponents.

**Appendix G** : This section has not been completed, but is so fraught with excessive requirements, it is difficult to determine next steps. The costs could overwhelm the whole program. Need to discuss.

We will follow up on setting a meeting, and in the interim, please do not hesitate to call at 619-683-5544, if you wish to discuss.

Very truly yours,

J. Whalen Associates, Inc.,
a California corporation

By: James Whalen
President

Attachment

| Page | Line | Comment |
|---|---|---|
| 2 | 2nd to last pargh.3rd line | cut "compliments" and replace with "complements" |
| 2 | last pargh. 2nd line | cut "has" and replace with "have" - cut "kids" and replace with "children" |
| 3 | 2nd pargh. 2nd line | cut "while" and replace with "and" |
| 4 | 1st pargh. 5th line | comma after "small," |
| 4 | last pargh. 6th line | cut "just" |
| 6 | Table 2.2 Major Land... | Does this total include fee-owned SDG&E property? |
| 7 | Table 2-3 | cut" Right-of-Ways" replace with "Rights of Way," |
| 7 | 2.3 -3rd line | cut "costal" replace with "coastal" |
| 7 | 2.3- last line | cut "predominant" replace with predominate |
| 8 | | |
| 9 | (3) Escondido Creek.. 3rd line | cut "and" |
| 10 | (8) Mount Olympus...3rd line | cut "for" and replace with "to" |
| 11 | (12) Santa Marg...2nd line | cut "was" replace with "were" |
| 13 | 2.5 -General Plan-5th line | cut "has" and replace with "have" |
| 13 | 2.5-General Plan-6th line | cut "complimentary" replace with "complementary" |
| 14 | 1st pargh. | add after last sentence: It also provides design criteria that offer design flexibility for biologically superior projects. |
| 14 | 3rd pargh. 2nd line | add after "constraints" -"and design flexibility provisions" of the BMO |
| 16 | 3.1 Overview - 2nd pargh. 7th line | cut "lead" and replace with "contribute" |
| 16 | 2nd pargh. 12th line | cut "retain" and replace with "facilitate" (it might not be there now?) |
| 18 | 3.2.2. Data-1st pargh. 6th line | cut "this" and replace with "these" |
| 19 | after 8. 1st pargh. 6th line | cut "is" and replace with "are" |
| 19 | after 8. 1st pargh. 6th line | cut "was" replace with "were" |
| 19 | 2nd pargh. Predicated Species.. | Referring to last 3 lines of pargh." How accurate were the species predicted ranges relative to known locations?" |
| 19 | 3rd pargh. Habitat Evaluation Models-2nd line | capitalize "arroyo" with "Arroyo" |
| 20 | 3.2.3. Preserve Design Methods | Referring to numbered 1-8 "Where does creation of hard-line projects take place? Should be explicit." |
| 20 | 3.2.4. Preserve Design Modeling-last line of pargh. | cut "complimentary" replace with "complementary" |
| 21 | 1st pargh. 6th line | cut "right-of-way" and replace with "rights of way" |
| 21 | 4th pargh-2nd line | strike "and" |
| 21 | 4th pargh-2nd line | insert comma after "lands," |
| 21 | 4th pargh-2nd line | insert after lands, "and other areas" |
| 21 | 5th pargh-Existing Conserved.. 3rd line | cut "we" and replace with "were" |
| 21 | 5th pargh-Existing Conserved.. 4th line | cut "will" and replace with "may" |
| 21 | 6th pargh. Pre-Approved... indented pargh. 1st line | capitalize "approved" with "Approved" |
| 22 | 1st pargh. Last line | cut "help towards" and replace with " "contribute to the recovery of" " |
| 22 | 1st pargh. Last line | strike "recovery" |

| | | |
|---|---|---|
| 24 | 3.3. 1st pargh. 2nd line | add after "Water Authority," water districts, |
| 24 | 3.3. 1st pargh. 2nd line | cut "SDGE" and replace with "SDG&E" |
| 25 | 2nd pargh. Special Districts-2nd line | add after and "regulated" |
| 25 | 3rd pargh. | Indent - Water Districts. |
| 25 | 4th pargh | Indent - School Districts. |
| 25 | 4th pargh. School Districts. 2nd line | cut "no" and replace with "limited" |
| 25 | 4th pargh. School Districts. 3nd line | add "of land with higher quality habitat" |
| 25 | 5th pargh. | Indent - Caltrans. |
| 25 | 5th pargh. Caltrans. 3rd line | cut "were" and replace with "was" |
| 26 | 4.1. Overview -1st pargh. 1st line | strike "of" |
| 26 | 4.1. 2nd pargh. 1st line | cut "exist" and replace with "exits" |
| 26 | 4.1. 2nd pargh. 2nd line | cut "is" and replace with "are" |
| 26 | 4.1. 2nd pargh. 3rd line | insert after expected "to significantly" |
| 28 | Table 4-2. Grand Total | "How do these totals reflect the acreage within the hardline projects when the hardline projects total more than 7,000 acres? |
| 29 | 4.3.1. 3rd pargh. 4th line | insert comma after "level" to "level, which" |
| 32 | 4.4.2. County Trails Program-1st line-comment regarding-"horse riding, bicycling" | "no consensus that equestrian & mountain bike use is passive recreation". |
| 33 | 4.5.1. Agricultural Clearing - 1st pargh. 2nd line | cut "mitigate" and replace with "provide mitigation for biological resource impacts." |
| 33 | 4.5.1. Agricultural Clearing-3rd line | cut "requirements," and replace with "requirements" |
| 33 | 4.5.1. Agricultural Clearing - 1st pargh. 5th line | add: "any" between "require..mitigation" |
| 33 | 4.5.2. Fire Clearing - 1st line | cut "up to 100" and replace with "100-130" |
| 38 | Federal Contributions: Other: 2nd line | add: after "(see description in Section 5.3)" "as well as at other locations in San Diego County." |
| 39 | Table 5.1 Existing Public Contribution to Preserve:Ramona Grasslands-Gildred | "*234 part of MSCP South equal total 1,100" |
| 40 | Caltrans: last line in pargh. | cut "Although," and replace with "Although" |
| 41 | 1st pargh. 4th line | cut "right-of-way" and replace with "rights of way" |
| 41 | 2nd pargh. 2nd line | cut "right-of-way" and replace with "rights of way" |
| 41 | TransNet Reauthorization. 4th line | Referring to "For the purposes of... improvements to SR-76" "This does not make sense. |
| 41 | TransNet Reauthorization. 8th line | add comma after "2.1," |
| 41 | TransNet Reauthorization-beginning section 2.1,...to end of pargh. | "This section needs a lot of work. The County needs to tighten up the estimates, not the least reason being to produce an estimate of excess land acquired; this excess can be used to complete for Section 6 Grants. |
| 41 | TransNet Reauthorization. 3rd line from end of pargh. | "$15,000 per acre" "too low, suggest "$20,000/acre." |

| | | |
|---|---|---|
| 41 | TransNet Reauthorization. Last line pargh. | comment references following - "Plan area, this would amount to 2,200 acres." "So what? Make a conclusion. |
| 41 | County Contributions. 3rd line | comment references following - "up to 20,000" "How was this determined? |
| 42 | County RPO Open Space Easements. 1st line | strike "the most recent amendment to" |
| 42 | Private Contributions. End of pargh. | "See below, other contributions" |
| 42 | County RPO Open Space Easements.2nd line | add comma "development," |
| 42 | County RPO Open Space Easement. 3rd line | cut "the steep" and replace with "those" |
| 42 | County RPO Open Space Easement. 4th line | comment references following "This aspect of the Ordinance...certain degree." Why? Please explain more. |
| 42 | County RPO Open Space Easement. 6th line | cut "projects" and repace with "project" |
| 42 | County RPO Open Space Easement. 6th line | cut "impacts," and replace with "impacts;" |
| 42 | County RPO Open Space Easement. 6th line | add comma after "however," |
| 42 | County RPO Open Space Easement. 3rd line from end of this pargh. | Reference line "20,000 acres of open space" "Why? Add support" |
| 43 | 5.2. Preserve Costs. Last line paragh. | add: "jointly" should read: "be jointly financed" |
| 43 | 5.2.1. Land Acquisition. 4th line | reference line "inception of the South County MSCP Subarea" "Our typical price for coastal sage scrub is $35,000/acre/and only Chapparral sells for a lower price (usually $15,000/acre)." |
| 43 | 5.2.1. Land Acquisition. 5th line | "$15,000" "$20,000 is more realistic since the big parcels are pretty much dealt with." |
| 43 | Table 5-2. Cost Estimates. Other | Future Gains cut "500" and replace with "600" |
| 43 | Table 5-2. Cost Estimates. 3 | "MHCP Preserve areas" "Why are MHCP areas being counted |
| 43 | Table 5-2. Cost Estimates. 4 | add: "directly" should read "and are directly not part of the overall public cost of the program." |
| 44 | 5.2.2. Land Management. 2nd pargh. 3rd line | should read "management of their land, nor adaptive management or monitoring." |
| 44 | Table 5-3. Estimate of Acres.. 2 | referencing MHCP preserve areas. "Why included?" |
| 44 | 5.2.3. Stewardship-Public Agencies. 4th line | add: "and monitoring" Should read. "Management and monitoring of preserve....available." |
| 44 | 5.2.3. Stewardship-Private Landowners. 1st line | reference some - "Why "some"? All of it will be with the exception of a few working ranches." |
| 44 | 5.2.3. Stewardship-Private Landowners. Last line pargh. | add after sources "unless otherwise stated." |
| 45 | 1st pargh.6th line | cut "buildout" and replace with "completion" |
| 45 | 1st pargh. 8th line | cut "buildout" and replace with "completion" |
| 45 | 1st pargh. 9th line | cut "considerably" and replace with "expectedly" |
| 45 | 5.2.4. Adaptive Management...2nd line | add "fee" between "retains fee ownership" |

| | | |
|---|---|---|
| 45 | 5.2.4. Adaptive Management...4nd line | comma after "tasks," |
| 45 | 5.2.4. Biological Monitoring. 1st line | add "jointly" should read "Public agencies will jointly participate" |
| 45 | 5.2.4. Biological Monitoring. Last line pargh. | add:"Land dedicated to preservation outside of the PMA will not require monitoring." |
| 45 | 5.2.4. Cost Estimate. 1st line | cut "agencies" and replace with "agency" |
| 45 | 5.2.4. Cost Estimate. 1st line | reference line "It is anticipated that each...lands they own." Why is this statement here? Delete and replace with "The County will fund or assume funding of adaptive management and monitoring on its land. |
| 46 | 1st pargh. 1st line | cut "is" and replace with "are" |
| 47 | 1st pargh. 4th line | add: "and be budgeted at" should read "will amount to and be budgeted at approximately.." |
| 47 | 5.2.6. Total Cost Estimate. 1st line | add: "and managing" should read "During the course of assembling and managing the preserve..." |
| 47 | Table 5-4. Total Estimated Program Costs. | "Acquisition & Mitigation $1,360.434.00" Why not $1,360,432,500 (See page 43) |
| 47 | Table 5-4. Total Estimated Program Costs. ASMD Development | reference " $30,230,445?"also see corresponding number 4 -How can it cost $30 mm to develop area specific management directives? A plan for the entire unincorporated areas could be done for $400,000. |
| 48 | 5.3.1. Federal. Department of Defense. 2nd last line of pargh. | add: Additional funding has been authorized for the military to use in acquiring offsite parcels which offset onsite impacts to natural resources on military bases. |
| 48 | 5.3.1. Federal. Department of Defense. 2nd last line of pargh. | cut "will and replace with "would" |
| 48 | 5.3.1. Federal. Department of Defense. last line of pargh. | cut "up to" and replace with "approximately" |
| 48 | 5.3.2. State. Propositions & Acts. 2nd line | cut "will fund" and replace with "funds" |
| 48 | 5.3.2. State. Propositions & Acts. 7th line | cut "will submit" and replace with "submits" |
| 49 | 1st pargh. 3rd line | strike "dollars" |
| 49 | 1st pargh. 5th line | cut "$225M" and replace with "$225MM" |
| 49 | 1st pargh. 5th line | cut "$180M" and replace with "$180MM" |
| 49 | 1st pargh. 6th line | cut "$45M" and replace with "$45MM" |
| 50 | 5.3.3. Regional. TransNet Extension... 1st pargh.3rd line | cut "is" and replace with "leverages" |
| 50 | 5.3.3. Regional. TransNet Extension... 1st pargh.3rd line | strike "used" |
| 50 | 5.3.3. Regional. TransNet Extension... 2nd pargh.8th line | add: "an additional" should read "identifies an additional $200 million..." |
| 50 | 5.3.3. Regional. TransNet Extension... last line of pargh. | add after projects "and which may serve as the local match for other funding sources as federal Section 6 Grants." |

| | | |
|---|---|---|
| 50 | 5.3.3. Regional. TransNet Extension... 5th pargh. 2nd line | add hyphen between "fifteen-year" |
| 50 | 5.3.3. Regional. Other. 3rd line | cut "including" and replace with "such as" |
| 51 | Landfill Tipping Fees. Pargh. 2nd line | add hyphen between "privately-owned" |
| 51 | Landfill Tipping Fees. Pargh. 3rd line | strike "of" |
| 51 | landfill Tipping Fees. Pargh. 3nd line | add (apostrophe) ' after "landfill's" |
| 51 | Landfill Tipping Fees. Pargh. | Reference line 4 - "commitment to conservation. Over...management" COMMENT: If this money isn't called mitigation, then maybe it can serve as local match. |
| 51 | 5.3.5. Private. 7th line | cut "Resource" and replace with "Property Anaylsis Record (PAR) and Habitat. |
| 53 | 4th pargh. Tax Credit Program. 9th line | Reference "tax credit against the California Personal Income on Corporation Tax Laws" Comment: Restate: this does not make sense. |
| 54 | 2nd pargh. Development Rights. 2nd line | cut "complimentary" replace with "complementary" |
| 55 | 5.4.1. Conservation Banking. 2nd pargh. 2nd line | add "or habitat types" should read "are established for the specific sensitive species or habitat types that occur on the site." |
| 56 | 3rd pargh | Reference "Mitigation banking...wildlife habitat values." COMMENT: .Where did this distinction between mitigation banks come from? We manage the Crestridge Mitigation Bank, and there are no wetland credits? |
| | | |
| 68 | 7.2.1. Habitat-Based Mitigation. 3rd pargh. | Reference entire 3rdpargh. Comment: Not good enough. |
| 69 | In-kind Mitigation. 6th line | add " the species" should read line 6 - " that the core ...distribution of the species is within the Plan area." |
| 69 | In-kind Mitigation.11th line | Reference line 11 -grasslands, COMMENT: Also non-native? Clarify to say "native" grasslands |
| 69 | 7.3 Wetlands Conservation. 3rd pargh. | Reference 4th line - "will ensure that mitigation occurs within the watershed for unavoidable impacts to wetlands", COMMENT: Impractical: need more flexibility - will have many cases of impossible mitigation. |
| 69-70 | 7.3 Wetlands Conservation. 3rd pargh. Last sentence | Reference: "The RPO will also be modified to add that when a biologically..... Allowed (Appendix B)" COMMENT: Please provide language. |
| 70 | Federal and State Regulations. 2nd pargh. 9th line | cut "the" and replace with "any required" |
| 70 | Federal and State Regulations. 3rd pargh. 2nd line | Reference: "will be evaluated" COMMENT: by whom? Is the County enforcing federal law? |
| 70 | Federal and State Regulations. 3rd pargh. 3rd line | cut "insure" and replace with "ensure" |
| 70 | Wetland Mitigation. 3rd line | cut "preserve" and replace with "reserves" |

| | | |
|---|---|---|
| 70 | Wetland Mitigation. 5th line | add: comma to "Specifically," |
| 71 | Table 7-2 . Wetland Obligate...Plan | Reptiles & Amphibians - cut "Two-stripe" and replace with "Two-striped garter snake" |
| 72 | 7.3.2. Vernal Pool Policy. 7th line | Add: "hydrology, unless a smaller distance can be supported by hydrological or other scientific studies." |
| 72 | 7.3.2. Vernal Pool Policy. Definition. End of pargh | Add:"Pools which only contain S.D. fairy shrimp may not necessarily be defined as a vernal pool." COMMENT: fairy shrimp are frequently found in seasonally wet depressions that are not vernal pools, such as the dirt parking lot of my child's school. |
| 73 | Table 7-3. Vernal Pool Indicator Species. | COMMENT: Add common names. |
| 74 | Surveys. 9th line | Move 9th line "Surveys for listed species should be performed in accordance with USFWS protocols that apply." to 4th line after "occur." before "If general site..." |
| 75 | 1st pargh. 2nd line | cut "it" and replace with "then" |
| 75 | 1st pargh. 2nd line | cut "meets" and replace with "meet" |
| 75 | 3rd bullet | insert "and Army Corps (if jurisdictional)" should read "The Wildlife Agencies and Army Corps (if jurisdictional) have concurred....biologically superior. |
| 75 | Restoration. 2nd pargh. 2nd line | insert "or vernal pool soils" should read " by presence (extant or historical) of vernal pools or vernal pool soils on-site or nearby." |
| 77 | Downtown Conservation Strategy. 1st bullet | cut "miles" and replace with "mile" |
| 77 | Downtown Conservation Strategy. 7th bullet | insert "or soils" should read "Currently contain vernal pools or soils supporting....species; and" |
| 77 | last pargh. Last line | insert " for direct and indirect impacts" should read "provide mitigation needs for direct and indirect impacts under CEQA" |
| 79 | 2nd pargh. | Reference entire pargh. COMMENT: include this provision for all pools. |
| 79 | 7.4.1. Narrow Endemic Policy. 5th line | insert comma after distribution, |
| 79 | Translocation/Relocation. 1st line. | cut "support" and replace with "supporting evidence" |
| 79 | Preserve Design Consideration. 2nd line | add "but not compulsory" should read "(generally but not compulsory at least 100 feet" |
| 80 | 1st pargh. 1st line | Reference "300 feet around active bird nests)" COMMENT: Why? This is a transitory circumstance depending on type of bird nest (e.g. golden eagles vs sparrows. |
| 80 | Population Outside Project Boundaries. 5th line | add comma to "boundaries," |
| 82 | 1st pargh. Number 4. | Reference "at least three times" COMMENT: What is the basis for what seems like an arbitrary ratio? 2:1 of this species-specific mitigation will be almost impossible to obtain anyway. Mitigation land of any rarity is very difficult to find. |
| 83 | 7.5.1 Certificates of Inclusion | Reference: "*under development*" COMMENT: When will it be available for review? |
| 83 | 7.5.2. Agricultural Polices | cut "Polices" and replace with "Policies" |
| 85 | 4th pargh. End of last line | insert comma after CEQA, |
| 85 | 4th pargh. End of last line | Add after may still apply" ,but CEQA review will not be used to obtain additional biological resource mitigation |

| | | |
|---|---|---|
| 86 | 7.5.4. Agricultural...PAMA. Development. 3rd line - 1st sentence | Reference: " While agricultural lands may.....standards in the BMO. COMMENT: Rewrite-not a sentence. |
| 89 | 7.5.6. Fire Prevention & Safety. 1st pargh. 5th line | cut "compliment" and replace with "complement" |
| 98 | final points | add "use alt. sitting standards such as narrower road widths |
| 107 | 4th section in chart | Section 3.2.5 should read "Section 3.2.6" |
| 108 | entire section | replace "participants" with "beneficiaries" |
| 110 | section 8.2.5 | replace "will" with "intends to" |
| 111 | last line | Add: "Additional biological resource mitigation, over and above this Plan's requirements, will not be sought during the County's CEQA process" |
| | | |
| 115 | 20 | "coastal" is mis-spelled |
| 123 | 35 | "use" should be "used" |
| 125 | 6 | "HCP/NCCP Plan *or otherwise*, then the..." |
| 125 | 6 | add: "biological resource issues with" before "annexed lands" |
| 126 | 25 | add: "and make findings" at end of pargh. |
| 129 | 33 | remove "resource" and add "habitat" |
| 130 | 2nd chart | check spelling of archeological |
| 131 | 19 | add comma after "tasks" |
| 131 | 20 | add comma after "cases" |
| 132 | 33 | replace "resource" with "habitat" |
| 133 | 12 | replace "resource" with "habitat" |
| 141 | n/a | add definition for Habitat Management Plan |
| 141 | n/a | add definition for Property Analysis Record |
| 147 | USFWS | add "Lynn Cox" |
| 148 | BIA | Change "Maloy" to "Malloy" |
| **Appendix A:** | | |
| 2 | 1st Pargh 1st line | add after [adoption date] and "through design flexibility contained in this article" |
| 4 | 86.511 (q) | note: add the definition of out-of-kind mitigation. |
| 7 | 86.513 (e) | delete "s" from Endangered Species Acts, |
| 9 | 86.514 (b)(2) | note: this seems a bit skimpy |
| 9 | 86.514 ( c) | add after Beneficiary "status" |
| 11 | 86.517 (a) (4) line 1 | add after habitat through "flexible" |
| 11 | 86.517 (a) (4) line 2 | delete locating and replace with "in the location" |
| 11 | 2nd pargh. | add "development and" Should read "...designing development and open space areas... |
| 12 | 86.518 Title | insert hyphen as follows: Habitat-Based Mitigation |
| 13 | 86.518 Table at top of page | Comment: table doesn't match MSCP standards. |
| 13 | 86.518 a) (3) 2nd line | add at the end of sentence one: Plan area ", unless approved by the County and wildlife agencies." |
| 13 | 86.518 a) (3) 3rd line | replace greater with "higher" |
| 15 | 86.519 ( c) (3) line 2 | add comma in 3,280 feet |
| | | |
| **Appendix B:** | | |
| 1 | 86.604 (e) (2). Last sentence | Reference: "However, within the North County Plan Area, new agricultural operations associated with the open space easements will not be permitted within the PAMA." *Comment:* Please clarify, Reads like no new ag operations in PAMA not correct. |

| | | |
|---|---|---|
| 2 | 86.605 (o) line 2 | Replace low with "lower" Comment: should allow for impacts to low-moderate. |
| 2 | 86.605 (o) line 3 | add hyphen between project and related, i.e. "project-related" |
| | | |
| **Appendix E:** | | |
| 2 | Campus Park - last full pargh | correct spelling from costal to "coastal" |
| | | |
| **Appendix F:** | | |
| 1 | last pargh on page 1 | add after natural habitat conservation "as a result of real estate development" |
| 1 | last pargh on page 1 | add after expected to "be" |
| 1 | last pargh on page 1 | change contribute to contributed. |
| | | |
| **Appendix G:** | | |
| 6 | Section 2.4, 2nd pargh | Reference: horse riding, bicycling, comment: not passive |
| 30 | Section 7, 4th pargh, 1st line | Reference: "There are three major components to the cultural monitoring program: identification of traditional Native American cultural use areas, archaeological site monitoring, and historic site..., Comment: This should not be an MSCP matter. |
| | | |
| **Appendix Figures:** | | |
| Figure 1-1 | Fenton Ranch | Map not correct. Fenton Ranch is not entirely conserved. |
| Figure 2-2 | Key | Replace Road Right of Ways should read "Road Rights of Way" x2 |
| Figure 2-3 | Key | Replace Right of Ways should read "Rights of Way" x2 |

J WA J. Whalen Associates, Inc.

Balancing the needs of the environment with those of business.

April 6, 2009

Mr. Tom Oberbauer
County of San Diego
5201 Ruffin Road, Suite B-5
San Diego, CA 92123

Re: Draft MSCP North Plan.

1660 Hotel Circle North

Suite 725

San Diego, California

92108-2820

619.683.5544

619.683.5585 FAX

www.jwhalen.net

Dear Mr. Oberbauer:

We represent two private land owners that will be affected by the County of San Diego's adoption of the North County MSCP (NCMSCP). The Sager Management Corporation owns three large parcels east of Escondido's Daley Ranch (APNs: 187-080-05, -07, -08 and APN 190-080-13). The Von Seggern Family owns two large parcels east of Escondido along Lake Wholford Road (APNs 190-090-02 and 190-100-03).

Both land owners are working with the City of Escondido on a potential annexation into the city. The parcels are within Escondido's sphere of influence, and the property owners want to be proactive in working with the County and their proposed NCMSCP. In anticipation of annexation, development on the properties will observe City of Escondido regulations regarding development in steep slopes and native habitat types.

The property owners take issue with Section 8.6.1 of the draft NCMSCP plan. The landowners are in disagreement with this section's requirement that any annexing properties must be compliant with the NCMSCP plan. These properties are within the sphere of influence of the City of Escondido, and if a successful annexation occurs, we do not believe they should be required to follow the policies of the County's NCMSCP.

The property owners would also ask that, for the record, the habitat mapping be accurately reflected in the NCMSCP plan. (See attached) We look forward to discussing these issues with you in greater detail. If you have any questions, please feel free to contact our office.

Very truly yours,

J. Whalen Associates, Inc.
a California corporation

By: James E. Whalen
President

Attachment

PSBS #T146B

Figure
3

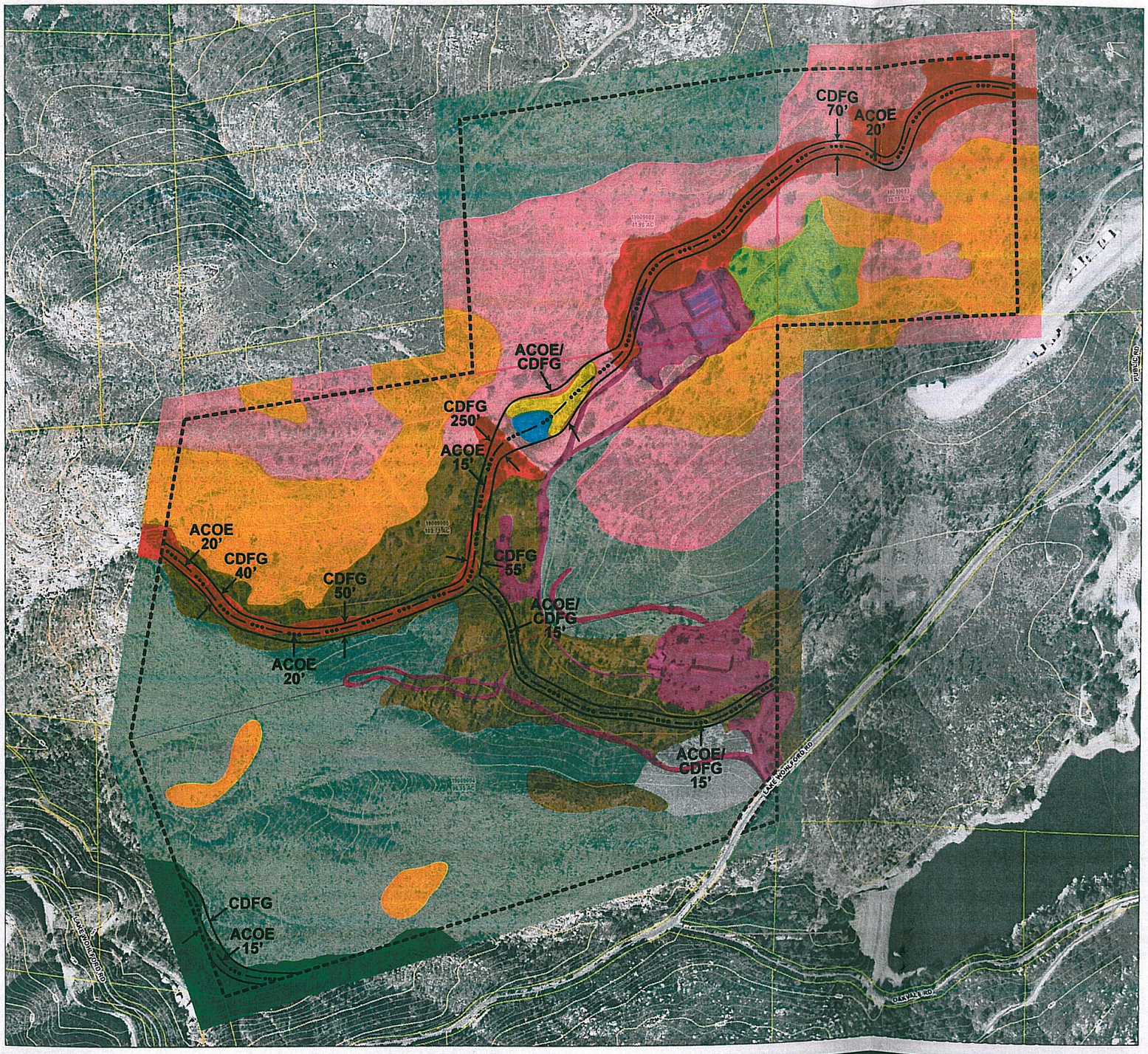


**FIG.3** VEGETATION & JURISDICTIONAL LIMITS
VON SEGGERN, ESCONDIDO, CA

- SOUTHERN MIXED CHAPARRAL
- ENGELMANN OAK WOODLAND
- EUCALYPTUS WOODLAND
- SOUTHERN COAST LIVE OAK RIPARIAN FOREST
- DIEGAN COASTAL SAGE SCRUB
- OPEN WATER
- DISTURBED LANDS
- COASTAL & VALLEY FRESH WATER MARSH
- NON-NATIVE GRASSLAND
- SOUTHERN COTTONWOOD-WILLOW RIPARIAN FOREST
- SCRUB OAK CHAPARRAL
- PROPERTY BOUNDARY

N

0 600 1200

1" = 1200 feet

6/30/2008

BASE MAP PROVIDED BY COUNTY OF SAN DIEGO DPWGIS

*Pacific Southwest Biological Services, Inc.*

PSBS #U979

Figure
3

# VEGETATION & SENSITIVE RESOURCES
# SAGER PROPERTY, ESCONDIDO, CA

| | HOLLAND CODE |
|---|---|
| **UD**: URBAN/DEVELOPED | 12000 |
| **OW**: OPEN WATER | 13100 |
| **ORC**: ORCHARDS & VINEYARDS | 18100 |
| **SMC**: SOUTHERN MIXED CHAPARRAL | 37120 |
| **CVFWM**: COASTAL & VALLEY FRESH WATER MARSH | 52410 |
| **OCLOW**: OPEN COAST LIVE OAK WOODLAND | 71161 |
| PROPERTY BOUNDARY | |

N

0 400 800

1" = 400 feet

6/302008

MAP PROVIDED BY THE COUNTY OF SAN DIEGO DPWGIS

*Pacific Southwest Biological Services, Inc.*

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
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www.allenmatkins.com

**Jeffrey A. Chine**
E-mail: jchine@allenmatkins.com
Direct Dial: 619.235.1525 File Number: 88888-074/SD717165.01

**Via Electronic Mail**

April 6, 2009

Mr. Thomas Oberbauer, Chief
County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Road, Suite B
San Diego, CA 92123

**Re: Objection to Inclusion of Morris Ranch (FM 12249) in North County MSCP**

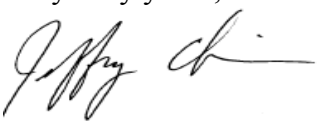
Dear Mr. Oberbauer:

This law firm represents Twin Development, the owner and developer of Morris Ranch, an 89 lot subdivision located at the junction of Gopher Canyon Road and Little Gopher Canyon Road, northeast of Vista, California. Twin Development is in the process of implementing the approved map. We were disappointed to learn that the project has been designated in the proposed North County MSCP as a pre-approved mitigation area (PAMA) and depicted as part of a wildlife corridor. Given the existing project approvals and advanced stages of project planning and development, the inclusion of Morris Ranch in the draft MSCP is inappropriate.

We therefore respectfully request that Morris Ranch be excluded from the boundaries of the MSCP, and in particular from the PAMA. In addition to the existence of 89 legal lots, the Vista Fire Protection District ordered the developer to implement a fuel reduction program within the project site. Twin Development has complied with the orders of the Fire Marshall, thereby affecting the vegetation within the development area. While Twin Development understands and applauds the efforts of the County to undertake and implement comprehensive habitat planning, the inclusion of an approved development project within the draft MSCP is counterproductive, represents poor planning and potentially raises significant legal issues.

Thank you for this opportunity to comment on the draft MSCP plan. Please feel free to contact me if you have any questions or comments.

Very truly yours,



Jeffrey A. Chine

JAC:cmm

cc: Supervisor Bill Horn (via email)
Claudia Fitzpatrick Anzures, Esq., Chief Deputy County Counsel (via email)
Wallace Benward, Twin Development, President (via email)

**GEOFFREY D. SMITH, MA**

April 6, 2009

County of San Diego
Department of Planning and Land Use
MSCP Division
5201 Ruffin Road, Suite B
San Diego, CA 92123

**Re: North County MSCP Draft**

To Whom it May Concern,

Thank you for the opportunity to comment on this draft of a document that will drive habitat and resource management policy in our region for years to come. This MSCP document is being prepared in the context of recent Vegetation Management Planning decisions at the county, as well as significant fuel management policy implementation at the city jurisdictional levels. As a result, there is no shortage of current scientific research to guide planning.

The fire events of 2003 and 2007 have drawn much awareness to the significant issues we face as a region that is defined largely by chaparral systems, and burgeoning residential growth patterns in remote backcountry areas.

Rather than identify point by point the notable issues I have observed in this draft, I will simply state what I view as obvious truths. Further, I will lend my support to the articulate and fact-based comments submitted by many of my colleagues, notably Dr. Anne Fege, USDA Forest Service (ret.), and Mr. Richard Halsey of the California Chaparral Institute. The substantial scientific and practical knowledge that these individuals bring to bear on this issue is remarkable, and to be ignored at our peril.

As a matter of fact, therefore, I submit the following fundamental truths:

> **Chaparral systems respond differently** to 'fuel reduction' processes as compared to forested systems. Thinning is generally not called for except near structures, and 'clearing' is always unjustified.
>
> **Our homes, business, and communities have been designed poorly** with regard to their ability to withstand inevitable wind-driven fire events at the wildland urban interface (in fact, as we have seen, even some distance from that interface.) Future building designs must embrace the reality of fire, and our existing buildings and communities must retrofit significantly to present adequate defense against wildfire.

11572 Alkaid Drive, San Diego, CA 92126 | 858.442.1425 | geoffrey@armstrong-smith.name

Wastefully focusing precious monetary and human resource on ill-advised and expensive active management of chaparral systems not only detracts from the real need; such efforts also serve to create a 'false green' or 'false safety' mindset in the community at large.

In summary, the fire science is clear, and needs to be reflected in this document.

Sincerely,

/s/
Geoffrey D. Smith, MA

Wilderness4All.org, Founder and Advocate
Los Peñasquitos Canyon Preserve CAC, Chair (1991 – 2009)
The Escondido Creek Conservancy, Former Executive Director (2005 – 2007)
Sierra Club, San Diego Chapter, Former Chair (1988 – 1989) and staff (2000 – 2003)
San Diego Fire Recovery Network, Steering Committee Member and discussion list moderator

Valley Center Trails Association

6 April 2009

Regarding: SDMBA Public Comment of the Draft North County Multispecies Conservation Plan

To Whom It May Concern:

After review the document, we find several areas of concern that are in need of clarification:

- Because the baseline study will take five years, how are existing trails and pathways used by the public taken into consideration.
- How can we be assured that item2.2 of appendix G will actually be developed?
- In section 2.4 of appendix G, how do you intend to determine that "human access is too intense?" We would hope that "selection criteria" and "intensity" be more completely defined.
- You have done a beautiful job of addressing many biological and cultural aspects. However, further clarification of the social and quality of life of "two-legged" human species may be appropriate.

It is often observed in rural areas that often large parcels of idle land are often abused by motorized off-road activity, illegal homeless camps and various forms of illegal activity (meth labs, drug dealing and prostitution) not to mention young people having parties with camp fires, alcohol and drugs that all leave behind trash in addition to the abandoned appliances. Our sheriff deputies do not have the resources to police these areas.

When trails are built and then utilized by members of the community to go for walks or to ride a bike or horse, a form of community policing occurs. The habitat is no longer destroyed, the wildlife is left in quiet solitude, the trash is picked up, the drug dealers go away and the kids keep the parties at home.

In closing, we would hope that there will be additional opportunity for public comment. This is far too important and far reaching action to be done without through consideration through public input.

Sincerely,

Fred Wollman
Board Member Valley Center Trails Association

PO Box 605; Valley Center, CA 92082; contactus@vctrails.org; www.vctrails.org

Memo to: Jared Underwood, County of San Diego, DPLU
From: Mary Clarke, San Diego Chapter – Sierra Club
Subject: Comments on North County MSCP – Preliminary Public Review Draft
Date: April 6, 2009

Thank you for the opportunity to review and comment on the Preliminary Draft North County MSCP dated Feb. 19, 2009.

INTRODUCTION

I am commenting on behalf of the North County MSCP/MHCP Task Force of the Sierra Club – San Diego Chapter (Task Force). On April 3, 2008, we submitted comments on an earlier draft of the NC MSCP. In the "General Comments" at the beginning of that letter, I stated the concerns of our Task Force regarding conservation of sensitive species and valuable habitat in North San Diego County. We remain concerned about adequate preservation of habitat for sensitive species; establishment and protection of viable linkages and corridors for wildlife movement; and protection of remaining wetlands. In addition, we are concerned about minimizing edge effects and encroachment into biological core and linkage areas.

GENERAL COMMENTS

Our Task Force supports the development of the North County MSCP because it identifies biologically important areas and linkages among these areas; it establishes means for protecting these areas to avoid continuing loss of endangered, threatened, and other sensitive species and their habitats; it identifies funding for assembly of the Preserve and other methods for acquisition/protection of biologically valuable lands; and it establishes guidelines and procedures for managing and monitoring the biological resources in the Preserve. Also, there are significant benefits that accrue when the NC MSCP is approved, such as availability of funding for high priority acquisitions.

All of the above are benefits of the plan. Some potential drawbacks of the plan include inadequate preservation of valuable habitat, so that sensitive species are not protected; inadequate linkages and corridors for wildlife movement; excessive encroachment into the Preserve of human activities, including roads and trails; and lack of specificity of the ordinance(s) that establish the legal bases for implementation of the Plan.

SPECIFIC COMMENTS

I. The NC MSCP does not conserve enough valuable habitat.

On page 58 of the Plan, it states that there are 294,849 acres of land in the study area, of which 57% (168,064 ac.) support natural vegetation. The number of acres to be conserved are 106,780 plus 7,022, for a total of 113,802 ac. This is 67.7% of the remaining natural vegetation in North County. We would like to see about 75% to 80% of the remaining natural vegetation conserved.

We realize that in analyzing the remaining natural vegetation in North County, it is necessary to identify core areas that support sensitive species and linkages among the core areas. This is difficult because the natural vegetation in North County is already very fragmented. Perhaps additional areas of valuable habitat can be identified and added to the PAMA, or mitigation ratios for impacts to valuable habitat can be increased.

Another problem adding to the relatively low levels of conservation in the Plan are the amounts of valuable habitat that have been lost in the Hardline Development Projects shown in Appendix E. Some of the larger Hardline Development Projects, such as Lilac Ranch (347 acres of natural habitats impacted) and Merriam Mountains (578 acres of natural habitats impacted), have conservation percentages in the 50-60% range. I have not checked to see to what extent the Hardline Projects are in the PAMA, but loss of habitat at these levels is bound to have a very negative impact on the Preserve.

II. Mitigation ratios appear to be too low.

The mitigation ratios shown on p. 13 of the Plan appear to be lower than those in the MHCP (Final MHCP Plan, Vol. 1, p. 4-19). In particular, the MHCP specifies the following:

No net loss for wetland/riparian habitats, both inside and outside the Focused Planning Area (FPA, which corresponds to the PAMA in the County's Plan);

3:1 mitigation for "Rare upland" habitat inside Focused Planning Area (FPA), 2:1 outside FPA

2:1 for CSS inside FPA, 1:1 outside FPA

The MHCP ratios are higher in these cases than the NC MSCP's ratios, and are more appropriate for adequate conservation of valuable habitat.

In addition, we agree with EHL's comment that mitigation for CSS should be in-kind.

III. Exemptions to the Plan are unnecessary and potentially harmful to the Preserve.

County and public projects should not warrant an exemption from the County's ordinance (BMO Section 86.513). These projects could have serious impacts on the Preserve and must meet the regulations of the BMO. We note that the "findings" for exempted projects are very weak and will not provide a remedy for this problem.

In addition, the "Minor Impacts" exemption in the BMO must be eliminated. Losing up to one acre of habitat should not be exempt, as these losses will add up. This exemption is not contained in the South County BMO.

In addition to the above inappropriate exemptions, allowing 5 acres of clearing for fire management outside of PAMA is unnecessary and detrimental to habitat protection. If 2 acres is enough for clearing per fire regulations, then there is no need for more.

IV. Core areas, linkages and corridors need better protection.

We cannot support roads crossing core areas, and road crossings of linkages and corridors that are established for wildlife movement should be avoided. When they cannot be avoided, they must provide adequate wildlife undercrossings/overcrossings, fencing to direct wildlife towards the corridor and away from the road, and proper signage to alert motorists to the wildlife crossing. We agree with the statement by your Independent Science Advisors on page 5 of Appendix C in Section 7, "Protect reserves from encroachment. Blocks of habitat that are roadless or otherwise inaccessible to human disturbance serve to better conserve target species than do accessible habitat blocks." Items a. through e. in Section 7 provide many useful suggestions for protection of core areas, linkages and corridors from encroachment, and we would like to see these standards and guidelines spelled out in the NC MSCP.

We note that Hardline Projects, such as Merriam Mountains, Montecito Ranch, and possibly, Pappas/Pasarelle/Meadowood, have roads going through the core biological areas. This fragments the Preserve, places wildlife in danger, introduces edge effects, necessitates expensive undercrossings/overcrossings, and results in hazards to motorists. Surely projects can be designed without putting roads through core areas.

In addition to roads, we are concerned about trails in the core areas, linkages and corridors. Appendix C, Section 7, Item c. addresses this issue and states that construction of new trails should be limited. We urge the County to discourage trails in core areas and to be very careful in designing trails in linkages and corridors, since these areas are designated for wildlife movement.

Also, we agree with EHL (comment letter of 3/24/09) that the plan does not address wildlife movement outside of PAMA areas and is not requiring road crossings in these locations. To protect wildlife and motorists, there should be appropriate road crossings outside PAMA as well as inside.

V. The Plan needs strong protections for the Preserve.

The plan needs to have more specific goals and objectives for each portion of the future reserve, or "Planning Segment," and projects need to make findings to show consistency with these goals and objectives.

Also, we concur with EHL that Section 5.4.2 of the Plan, Permanent Resource Protection, is extremely important, and the protections it lists should be included in the BMO. In particular, Item 2. under "Assurance of Long-Term Biological Integrity" on P. 56 of the Plan should be included in the BMO:

"Lands set aside in order to make preserve design findings in the BMO will be permanently protected with biological conservation easements, perpetual open space easements equivalent to conservation easements or, dedications in fee to the County or other government agency or non-profit entity with a stated conservation mission."

VI. Other comments.

A. McClellan-Palomar Airport hardline project, pp. 27-30 of Appendix E of the Plan.

We note that CSS mitigation for airport expansion is only at a 1.5:1 ratio. If this is occupied habitat, the ratio should be 2:1.

There is no discussion about Calif. coastal gnatcatcher critical habitat designation. It was our understanding that critical habitat designation extends into the airport properly. Please add discussion of the relationship of proposed impacts for airport projects to boundaries of critical habitat designation area. If critical habitat is proposed for impact there should be further avoidance and minimization efforts.

Vernal pools are wetland habitats and should be subject to avoidance/minimization efforts for wetlands. Please add further analysis of avoidance and minimization efforts for vernal pools.

B. Removal of San Marcos Highlands project from document.

In their comment letter on the 2008 version of the draft NC MSCP, the Wildlife Agencies requested that the San Marcos Highlands project be deleted because it did not receive LAFCO approval and the City of San Marcos did not renew the development agreement. (See letter of May 30, 2008, from the Wildlife Agencies, Attachment 1, note on p.3.8.1/46/Tbl. 3-4.)

We appreciate your removing mention of this project from the document. However, it appears to still be shown on Figure 5-2 as "Anticipated Project Uplands." We would appreciate it if you would remove it from Figure 5-2 and show the area as "Natural Upland Habitat within PAMA." (The project was located in the County, south of Buena Creek Rd., in the Agua Hedionda Creek Valley.)

C. Regarding protections for wildlife when roads cross Preserve corridors, in discussion with San Marcos City Councilman Chris Orlando, we learned that when Twin Oaks Valley Rd. was extended to the south a few years ago, crossing an important wildlife corridor, plants were used in the median areas that were attractive to deer. Consequently, deer were hit by vehicles on this road. We do not know what kinds of plants were involved, but we urge the County to insure that any plants in medians or along roadsides that cross wildlife corridors (or core areas – hopefully not!) are not attractive to wildlife.

This concludes my comments. Thank you very much for your consideration of these concerns/suggestions. Please feel free to contact me at clarkemh@aol.com or 760-231-7362 if you have any questions.

Best wishes,

Mary Clarke
Co-Chair, North County MSCP/MHCP Task Force
Sierra Club, San Diego Chapter

cc: US Fish and Wildlife Service
CA Dept. of Fish and Game
U.S. Army Corps of Engineers

March 13, 2009

Department of Planning and Land Use
ATTN: Mr. Eric Gibson, Director
5201 Ruffin Road, Suite B
San Diego, CA 92123

SUBJECT: Request to be a Party of Record and Comments on the February Draft North County MSCP

Dear Mr. Gibson:

The San Diego County Multiple Species Conservation Plan (MSCP) needs to be reviewed and rewritten from start to finish. It glosses over primary and well-known facts. Those facts are essential to have a rational and complete management strategy to face the challenges of the future. In formatting my comments below, I followed the convention when drafting legislation of striking out inappropriate original language and underlining proposed improvements to proposed legislation.

Starting with page 1 of the MSCP, there must be a clearer and more fact based focus in the plan, to whet the following extracted sections are proposed for improved language consistent with a true multiple species conservation plan that does not pander to development interests but rather balances preservation of native flora and fauna against only the most essential intrusions on marginal lands by human activities:

" **1.1. Overview**
San Diego County (County) is home to m~~any~~ore rare, threatened, and endangered species than anywhere else in North America. This provides the people of San Diego County with unique challenges and opportunities…~~.This Plan provides economic benefits by reducing constraints on future development outside of proposed preserve areas and decreasing the costs of compliance with federal and state laws protecting biological resources~~. Only after careful analysis may land be converted from its pre-European condition to one suitable for human activities.

page 3
**1.3. Purpose and Need**
This Plan is designed to create an environmentally driven efficient ~~and economical~~ framework for applying cost-benefit analysis to assure compl~~ying~~iance with county, state and federal endangered species laws while accommodating future growth in the region while maintaining functioning ecosystems and protecting rare species within the Plan area.

page 4
Lethal take of native flora and/or fauna ~~individuals or populations~~ ~~is not expected to be~~ will not be permitted ~~or to occur~~ for ~~most~~ any plant or animal species during implementation and duration of the Plan. For California Fully Protected….

Page 33

**4.5.2. Fire Clearing**
Typical clearing for fire safety is up to 100 feet from a home, which amounts to approximately one acre (200 by 200 feet). Additional clearing (approximately one acre) ~~will also be required~~ along driveways and roadways, and for accessory structures such as sheds, barns and corrals may be permitted after county review. This means that ~~about~~ no more than two acres ~~are normally required to~~ will be allowed to accommodate fire safety around a typical home in the unincorporated area. Homeowners should also incorporate fire hardening principles to all dwelling. This does not change regulations in place at the time of Plan development, and would permit clearing that may be necessary around the property boundary to accommodate fire safety for existing residences nearby.

page 56
5.4.2. Permanent Resource Protection

**…Assurance of Long-Term Biological Integrity.** The long-term biological integrity of lands conserved by the Plan will be assured by at least one or all of the following options:…

page 87
7.5.5. Policies Related to Grazed Lands
Existing legally established and irrigated grazed lands are eligible to receive the same benefits of other agricultural lands by following Adaptive Management Practices the ~~BMPs (Table 7-6)~~ and applicable County ordinances. Special attention must be given to BMPs specific to the Stephens' kangaroo rat.

page 90
**7.5.6. Fire Prevention and Safety**
…• Other circumstances where safety needs on existing homes require additional clearance, beyond the typical 100 feet from homes (but only after "fire hardening" of the structure has been made and found inadequate by the appropriate fire protection agency.

page 92
The following section is excessively broad and provides no realistic criteria to evaluate the NEED for a parcel to be developed, other than the financial interest of the owner. It must be severely circumscribed so that development doe3s not occur where it would provide unusual burdens on the community to deliver normally expected services and does not engender potential danger to surrounding properties.
**7.5.7. General Exceptions**
In certain cases, a project may be found to be so constrained by the site-specific physical conditions, that it infeasible for the project to meet all the goals and criteria or other requirements in the Plan. In such cases, after all other design options have been pursued, an exception to the full requirements of this Plan may be considered according to the implementation of Adaptive Management Practices ~~BMO~~. The exception shall be the minimum necessary to assure no increased impact on community services, hazards to adjacent properties, afford relief and accommodate development. An exception to the Plan requires the concurrence of the Wildlife Agencies.

page 97

**7.7.2. County Pest Control**

Certain outbreaks of pests that endanger agricultural crops require drastic measures to control these pests. These may include quarantine of certain agricultural areas and treatment of these areas by the County, or treatment required by the County. To minimize potential harm to native species, the County will ensure that the pesticides are applied properly to minimize damage to non-target species. The County also engages in activities to control invasive, non-native plants. These activities often take place on disturbed sites, but may also occur in natural areas. To minimize potential harm to native species, the County will ensure that the herbicides are applied properly by licensed personnel to minimize damage to non-target species. When applying herbicides in natural areas, applicators must first consult with the preserve manager. If consultation indicates a potential for sensitive plants, conduct a records/field search prior to spraying with a herbicide approved by the preserve manager to identify sensitive plants that may be present in the treatment area.

page 114

the first two paragraphs are superfluous and should be stricken from the plan. There is no need to cit exiting statues if they will be applied during the governmental review process. This plan is to set for policy and the goals of the plan. Therefore, all section 8.5 needs is the following:

8.5. ~~Changed Circumstances~~

~~Changed circumstances are defined under the federal "No Surprises" Rule as "changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the USFWS and that can be planned for." Changed Circumstances potentially affecting the preserve are defined as future events for which it is reasonably foreseeable that such an event may occur during the life of this Plan and that such an event may negatively affect the Covered Species and/or their associated habitat within the preserve. Changed Circumstances addressed by the Plan include the following events: repetitive fire, flood, drought, invasion by exotic species, future listing of species, tribal annexations, major diseases, and climate change.~~

~~Pursuant to the "No Surprises" Rule (50 C.F.R. § 17.22(b)(5)(ii)), the USFWS may not require (1) any conservation or mitigation measures in addition to those provided under Section 8.5 in response to a Changed Circumstance or (2) additional conservation or mitigation measures for any Changed Circumstance not identified in Section 8.5 without the consent of the County, provided the County is properly implementing the Plan. As recognized in the "No Surprises" Rule (50 C.F.R. § § 17.22(b)(6) and 17.32(b)(6)), the USFWS, federal agency, state agency, local agency, or private entity may take additional actions at their own expense to protect or conserve a Covered Species within the Plan area.~~

**Relationship to Adaptive Management.** Preventative measures and responses to Changed Circumstances are generally addressed through the adaptive management element of this Plan. The adaptive management program requires monitoring of

species and habitat conditions, with a management response to observed threats. In anticipating and reacting to Changed Circumstances, adaptive management allows for revisions to the operating conservation program, thereby enhancing future strategies for the conservation of species and their habitat. Changed Circumstances allow specific triggers and management actions to be applied to foreseeable threats. The ability to carry out the preventative measures and adaptive management actions for Changed Circumstances, described below, is included in the adaptive management funding calculations for this Plan.

page 116
8.5.1 Repetitive Fire
This section uses many established (and disproven) believe systems in place and they should be struck down. Further, it leaves gaping holes in the scientifically assembled information available for appropriate management of native flora and fauna given any change in the fire regime of an area. The most egregious misstatement is set forth below with appropriate amendments:

Based on their pre-European history, most vegetation communities will be fairly resilient and recover, if not benefit, from fires. In addition, the lower fuel loading after fires creates a less conducive environment for repeat burns for at least 10 years in most chaparral and woodland vegetation communities but can see significant invasions of non-native plants which increase combustible materials and can inhibit reestablishment of native plants with lower fuel indexes….
Brush Abatement Program. To further reduce the risk of fire, the County has instituted a special weed abatement and brush management program focused particularly on the interface between urban areas and wildlands. This program, through local fire agencies, generally requires clearance of flammable vegetation within 100 feet of single family dwellings located adjacent to wildlands in association with appropriate "fire hardening" of structures.

page 141
**Chapter 11, definitions**
Why in the world are rare plants excluded from protection? They are easy to identify as they do not move! We may have to clear them for a necessary development but they should be accounted for in the impacts of any human activity and then appropriate policy makers, after conduction a cost/benefit analysis, determine if that environmental impact is justified! If the definition below is not adopted, then the statement on page one of appendix G [which reads in part: "The Multiple Species Conservation Program (MSCP) North County Plan (Plan) ensures the longterm survival of sensitive plant (emphasis added)and animal species and protects native habitats….]C:\Users\AlanRaquelBennett\Documents\CommentsOnSanDiegoNorthCountyMSCP.doc must be drastically changed!!

**Incidental Take Permit** – The permit granting take of listed species provided such take is incidental to and not the purpose of the carrying out of an otherwise lawful activity. For purposes of the section 10(a)(1)(B) permit, Incidental Take refers ~~solely~~ to threatened, rare and endangered flora and fauna species ~~other than plant species~~.

Appendix G page 5
(why in the world is a significant POLICY STATEMENT like the one below buried in an appendix; an appendix is for technical support and to append supporting information of a plan or policy??? Appendices DO NOT MAKE POLICY!!!!

2.3 Fire Management. ~~Fuel management zones around the edge of preserves may be necessary in some cases to protect existing homes. Maintenance of vegetation within these zones is considered part of the necessary stewardship of preserves. In some cases arrangements may be made to allow or require homeowners to perform this work. However, unsupervised public clearing of habitat in the preserve will not be allowed. Permanent markers may be established to delineate the limits of fuel management zones. ASMDs will describe fire management actions that will be conducted within preserves for20fire safety purposes. The San Diego County Fire Chief's Wildland/Urban Interface Task Force has prepared county-wide brush management guidelines in concert with the Wildlife Agencies (County of San Diego, 2009). Fire Management for ecosystem and species health will also be considered in the development of ASMDs~~ Structures for human use shall be maintained at least one hundred feet from any native flora in a preserve area.

Appendix G, page 17
**3.4 Vegetation Management** *(Section Under Development)*
Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD. Vegetation management activities are covered under the Plan and lead to ecosystem health, resiliency, and fire safety. Each Ecosystem Health Plan will be prepared using the guidelines in Section 4 for the particular vegetation communities in mind. A variety of measures may be required such as maintaining fuel management zones, creating and maintaining fuel breaks, vegetation thinning, fire suppression, and controlled burns.

There are a variety of methods that may be used, including but not limited to hand thinning, controlled ignitions, ~~managed grazing~~, creating fire lines, application of herbicides by licensed professionals only, mowing, and water or retardant drops. Since these measures are intended to adaptively manage for ecosystem health and public safety, mitigation will not be required and these activities will be covered under the Plan permit.

page 7
**2.3. Vegetation Communities**
The Plan area contains approximately 167,302 acres of pre-European vegetation communities and 127,547 acres of altered landscapes. The predominant natural vegetation communities are chaparral (25.7%) and coastal sage scrub (10.1%). (sp)
Agriculture
(26.6%) and developed land (15.9%) predominant in the altered landscape (Figure 2-4; Table 2-4).

page 17:
3.4 Vegetation Management (Section Under Development)

Vegetation management including fuel load management will be incorporated for all preserves as an Ecosystem Health Plan in the ASMD. Vegetation management activities are covered under the Plan and lead to ecosystem health, resiliency, and fire safety. Each Ecosystem Health Plan will be prepared using the guidelines in Section 4 for the particular vegetation communities in mind. A variety of measures may be required such as maintaining fuel management zones, creating and maintaining fuel breaks, vegetation thinning, fire suppression, and controlled burns. There are a variety of methods that may be used, including but not limited to hand thinning, controlled ignitions, managed grazing, creating fire lines, mowing, and water or retardant drops. Since these measures are intended20to adaptively manage for ecosystem health and public safety, mitigation will not be required and these activities will be covered under the Plan permit.

page 22,
Tables 7 and 8 present information on the biggest challenges faced in coastal sage scrub, chaparral, and grassland vegetation communities and corresponding management and monitoring guidelines. (Table 7 text is below, table 8 is Invasive Species)
Table 7, Fire:
Challenges: ---Chaparral communities are adapted to ~~natural~~ pre-European settlement fire regimes. These communities support different assemblages of plants at each stage of development – “fire following” annuals and animals that prefer open areas in early stages and “old growth” and cryptic species in later stages – therefore, maintaining a variety of age classes is important to maintain these characteristic species assemblages.
---Frequent return intervals of fire may create opportunities for the establishment of invasive species, potentially causing a type conversion from shrublands to annual grasslands. This can be caused by increased ignition frequency often experienced on the urban-wildland interface.
---Large and/or rapidly spreading fires can impact natural communities. Large fires can kill more animals than small or moderate fires since there are fewer opportunities to escape. Species not well adapted to post-fire landscapes may have difficulty finding refugia or repopulating large burned patches.
---Erosion is often increased after fires due direct exposure of soil to the elements. Erosion and runoff may also be accelerated in some areas due to altered chemical properties of the soil from exposure to extreme temperatures, reducing the organic content of the soil among other changes.
Management Guidelines: ---In some cases prescribed fires may be used as a form of habitat management. However, fire management policies developed for specific preserve areas must consider many variables such as: the potential of fire to eliminate important populations of rare, narrow endemic species, the high severity of fire in more mature chaparral communities, the risk of fires to nearby residents, and leaving refugia of unburned habitat, if possible.
---Human-caused ignition sources (e.g., house fires, yard fires, chimney embers, firecrackers) should be controlled through public outreach and enforcement to prevent unnatural fire frequency.

Monitoring Guidelines: ---Fire history maps maintained by CALFIRE should be reviewed at least once every 10 years to determine if preserve lands are within pre-European fire return intervals & for estimation of fuel age class.
---Inspect fuel management zones on urban-wildland interfaces (in conjunction with Fire Agencies) to assure adequate fire buffers between homes and wildlands.
---Post-fire monitoring should be conducted within the first 3 years following significant fires; the first 2 growing seasons after the fire is preferable. Elements to include in monitoring include sensitive plant populations, host plants for sensitive species, existing or potential erosion threats (to life, property, or natural resources), non-native invasive species, vegetation community response, and animal movement.

4.3 Oak Woodlands and Coniferous Forest
Table 11: Fire
Factors: ---Frequent fires and infrequent fires can affect recruitment of new trees and alter species composition, including dominant species.
---Large fires can severely impact sensitive species and habitat. Large fires can kill more animals than small or moderate fires since there is less room to escape. Plant and animal species may be left without adequate refugia to maintain their populations until recovery of native vegetation can occur.
---Unusually hot fires caused by unnaturally high fuel loads (from fire suppression, drought, or disease) can damage soils causing unusual amounts of erosion, removing the soil seed bank and thereby the community's means of natural recovery.

Management Guidelines: ---In some cases controlled fires may be used as a form of habitat management. However, ASMDs must consider many variables suchas: the potential of fire to eliminate important populations of rare, narrow endemic species; the high severity of fires when fuels have accumulated, the risk of fires to nearby residents, and leaving refugia of unburned habitat, if possible.
---Human-caused ignition sources (e.g., house fires, yard fires, chimney embers, firecrackers) should be controlled through public outreach and enforcement to prevent unnatural (pre-European) fire frequency.

Monitoring Guidelines: ---Fire maps maintained by CALFIRE should be reviewed every 10 years to determine if preserve lands are within pre-European fire return intervals. ---Inspect fuel management zones on urban-wildland interfaces (in conjunction with Fire Agencies) to assure adequate fire buffers between homes and wildlands.
---Post-fire monitoring should be conducted within the first 3 years following significant fires; the first 2 growing seasons after the fire is preferable. Elements to include in monitoring include sensitive plant populations, existing or potential =0 A erosion threats (to life, property, or natural resources), and animal movement. (More details regarding post-fire monitoring will be provided in Fire Management Plans for preserves.)

Impacts of fire "clearing" are estimated up to 19,000 acres, and 9,000 for residential brushing and clearing, pages 33-34 in "Impacts" section of overall document, http://www.sdcounty.ca.gov/dplu/mscp/docs/Copy_of_MSCP_North_County_Plan.pdf .

### 4.5.2. Fire Clearing

Typical clearing for fire safety is up to 100 feet from a home, which amounts to approximately one acre (200 by 200 feet). Additional clearing (approximately one acre) will also be required along driveways and roadways, and for accessory structures such as sheds, barns and corrals. This means that about two acres are normally required to accommodate fire safety around a typical home in the unincorporated area. Homeowners ~~should~~all also incorporate fire hardening principles to all dwelling. This does not change regulations in place at the time of Plan development, and would permit clearing that may be necessary around the property boundary to accommodate fire safety for existing residences nearby.

**Impact.** The fire clearing discussed here refers only to new clearing around structures that has not been analyzed and mitigated for as part of a larger subdivisions or development projects. If none of the projects currently in process or any additional projects were ever developed, and all parcels were cleared to the maximum extent allowed by General Plan density and the exemptions under this plan, the clearing could result in the impact of up to 19,000 acres (13,000 acres within PAMA and 6,000 acres outside) of natural habitats within the Plan area. This is the maximum clearing that could occur associated new with single family dwellings not built as part of a subdivision or other development project. Subdivision and other development projects that go through discretionary permit review with the County incorporate fire hardening of structures and fire clearing into their plan design and the impacts of this clearing are mitigated for as part of the total project mitigation. It is not expected that this or the additional clearing exemption discussed in section 4.5.3 will inhibit preserve assembly.

Thank you for your attention to these concerns and the concerns of all San Diego County residents as we embark on a 21st century plan to preserve our children's and grandchildren's legacy.

Sincerely,


***Alan Bennett***

Native Plant Steward
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Qualified Tree Farm Inspector #7623
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I would think this plan should be able to cover all species in appendix H. Unless these species are covered you are forgetting one of the original intents of the MSCP effort – no suprises to property owners. I would suggest eliminating appendix H and having these species covered. Otherwise you are admitting that the consultants, biologists and staff don't really have a complete grasp on what they are planning. A list of over 60 species is just to large to support given the knowledge that should be available.

**Frank Ohrmund**
Broker/Owner
**Otay Real Estate**
2433 Fenton Street, Suite A
Chula Vista, CA 91914
619-397-5300 voice
619-397-5370 fax
858-945-4974 cell

TO: department of planning and land use, MSCP division
call 858-495-5524 or 888-643-0433, fax 858-694-3755, or send a letter to the County of San Diego, Department of Planning and Land Use, MSCP Division, 5201 Ruffin Rd., Suite B, San Diego, CA 92123
SUBJ My comments on the North County MSCP Draft Plan
FROM Michael R land
540 Sonoma Street
San Marcos, CA 92078

Have you considered add protection for the White-tailed Kite, In the Orange County draft plan,
See the attached file for the http://www.ocplanning.net/ssnccp/nccp_hcp.aspx

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Southern Subregion Natural Community Conservation Plan

**Southern Subregion NCCP/HCP Plan**
The Southern Subregion Study Area consists of 132,000 acres. This includes 40,000 acres within the Cleveland National Forest and 92,000 acres within the Planning Area. The purpose of the proposed Southern Subregion Natural Community Conservation Plan and Habitat Conservation Plan is to protect designated open space and conserve multiple species and their habitats. This would be accomplished by providing for the long-term management of the natural communities that provide habitat essential to the survival of a broad array of wildlife and plant species

 NCCP/MSAA/HCP Table of Contents

 NCCP/MSAA/HCP Executive Summary

 NCCP/MSAA/HCP Ch 1 Introduction

 NCCP/MSAA/HCP Ch 2 Need & Purpose

 NCCP/MSAA/HCP Ch 3 Existing Bio/Hydro/Geo Setting

 NCCP/MSAA/HCP Ch 4 Southern Subregion Planning Guidelines

 NCCP/MSAA/HCP Ch 5 Watershed & Sub-Basin Planning Principles

 NCCP/MSAA/HCP Ch 6 Conservation Planning Process

 NCCP/MSAA/HCP Ch 7 Habitat Reserve Management & Monitoring Program

 NCCP/MSAA/HCP Ch 8 Review of 'B' Alternatives

 NCCP/MSAA/HCP Ch 9 Review of Habitat Reserve Design/Habitat Reserve Management

Program Alternatives

NCCP/MSAA/HCP Ch 10 Proposed Conservation Strategy

NCCP/MSAA/HCP Ch 11 Covered Activities, Compatible Uses & Prohibited Uses within the Habitat Reserve

NCCP/MSAA/HCP Ch 12 Implementation of the Subregional Conservation Strategy

NCCP/MSAA/HCP Table 12.3 Projected Annual Revenues and Expenses for RMV's Habitat Reserve Lands

NCCP/MSAA/HCP Ch 13 Conservation and Impact Analyses

NCCP/MSAA/HCP Ch 14 Consistency with Statutory Requirements

If you go to Ch 13, you will see the White-tailed Kite mentioned. We have White-tailed Kites here in San Marcos, although I have only seen one individual near San Marcos creek in one year only. One project EIR states the White-tailed Kite is present, but I have only seen it in one year out of 6 years I have lived here in San marcos.

Have you considered adding a cowbird trapping program, such as the one mentioned in the above documents?

Have you considered all the requirements that are found above in Chapter 13?

I realize this is a draft NCCP?MSAA/HCP but it goes a long way. I live here in San Marcos where we have no adopted plan, just a draft 2001 plan. The City of San Marcos is very reluctant to get involved in adopting a plan.

On a very positive note, I really like the way you separated the graphics, photos, figures, etc. from the main text document. This should be the standard for these type of documents. It makes it so much faster to download the pdf files.

If you want to see one of the worst possible documents go to the SANDAG website, and try to open the DRAFT EIS?/EIR for the North County Cities, the file is over 500 MB and I have tried several times to download it and my system always crashes.

Sincerely,

Michael R Land

TO: department of planning and land use, MSCP division
call 858-495-5524 or 888-643-0433, fax 858-694-3755, or send a letter to the County of San Diego, Department of Planning and Land Use, MSCP Division, 5201 Ruffin Rd., Suite B, San Diego, CA 92123
SUBJ My comments on the North County MSCP Draft Plan
FROM Michael R land
540 Sonoma Street
San Marcos, CA 92078

I read in the draft, that the San Marcos landfill at Bradley Park is part of the County MSCP. I understand there was a court settlement between the county and city of san marcos. Is that part of the settlement? Were there any gnatcatcher surveys? Are there are any vegetation maps of the landfill? How long does the county have responsibility for this? Was it submitted to the USFWS for their critical designation of the coastal california gnatcatcher? The usfws has initiated a new 5 year review of the critical habitat for the coastal california gnatcatcher? Has the county entered the gnatcatcher surveys onto the county website? Where would I find that information?
How will the county's plan integrate with the 7 North County's Cities plan to create a MSCP?
I think some of that information should be supplied in the North Coiunty MSCP or at least references to documents, such as the agreement of the county to maintain the habitat at the San marcos landfill.

Sincerely,

Michael R Land

The plan is good. Far better than the Conservation Element of the County General Plan. The MSCP is more specific, has better information on sources of funding, and a better framework for acquisition, monitoring and management.

That said, here are the deficiencies:

1. Unforeseen Circumstances. Many are complete foreseeable. For example, eminent domain/take by state or federal government, such as occurred along the U.S. Mexican border, which impacted the (South County) MSCP.

So, too, is large scale fire. The area around Fallbrook and Santa Luz burns all the time. The Plan, as written, creates too large a loophole and "get out of jail free" card for at least these two activities.

2. Exclusion of school districts and special districts. Specifically, the exclusion of the Ramona School District from vernal pool conservation. I am not aware of state laws that exempt these districts from compliance with basic land use regulation and state or federal Endangered Species Acts. Why exempt them from the MSCP?

3. Basic definition of conservation. Conservation, as defined in the Endangered Species acts (state/fed) calls for protection and increase of target populations. It is not a static concept. It does not imply doing what is needed to keep a species from going extinct. See 3.2.1. The goals of the plan are to preserve, protect and enhance habitat values and the number and quality of life of species thereon.

4. Fire. Sections 4.5.2, 4.5.3 and 8.5.1 among others. I object to the use of the term "clearance" or "clear" with respect to vegetation management activities. Pursuant to State law (including PRC 4291 and others), vegetation is selectively managed within the defensible space perimeter on PRIVATE PROPERTY AROUND A HOME. There can be no taking of public resources in this process. Vegetation is managed by removing invasive, exotic species first, then removing deadwood and dying wood. Then thinning and pruning. The resulting landscape can and should support species like the California gnatcatcher.

Fire risk management need not denude land or eliminate the possibility of lands being incorporated into a functioning preserve.

In fact, I might recommend incentives for private (and perhaps public) land owners to perform better vegetation management and better retrofitting of poorly designed and constructed (existing) homes.

5. Funding. Identification of potential funding sources is good, but the Plan never lays out a timeline where acquisition, management, monitoring, reporting and funding are coincident.

As I read it, the Plan allows development to occur right away and conservation to occur at the very end of the 50 year NCCP permit life!

The County's financial contribution is wonderful, but in itself insufficient.

The Plan needs to include a mechanism to assure that sufficient funding is coincident with approvals for projects.

There are a number of ways of doing this without burdening specific projects. For example, assessment districts and advances by the County (or others) with reimbursement (plus interest) from future permitees.

The Plan should be specific as to how money will be provided for key activities and what will happen in the absence of funding.

6. Agriculture. I object to the idea that citrus groves or other agriculture could be Tier 1 habitat. Perhaps I read this incorrectly. I hope so.

In addition, mitigation ratios of 0.5:1 for take by ag interests is a give away to agriculture, which so far has not proved it can conserve water and reduce reliance on chemicals and energy as rapidly as other industries whose mitigation ratios are higher.

I could find no mechanism to assure agricultural interest compliance with Conservation Easements or the requirement that activities maintain conservation and linkages. This is party a funding issue. I cannot tell whether grants of Conservation Easements or similar conservation means are supported by money and the money is used by monitors and managers in evaluating compliance. And what are the remedies for non compliance?

Under the Plan, agricultural "take", "clearance" from fire risk management and "brushing" can all take place at a far faster rate than preserve acquisition.

This is inconsistent with the goal of maintaining balance and conserving species.

We will not know if this is occurring. Why? Without up front funding, there is no preserve-wide monitoring and management in place at the inception of the Plan.

Should development related activities outrun conservation related activities, there must be some mechanism to fund "catch up" acquisition, stewardship and adaptive management.

7. What about Rancho Guajome? It is not mentioned, nor, as I read the document, is its development potential. Perhaps it is out of the range of the North County Plan.

8. Vernal Pools. The text points out the historically futile conservation efforts expended in protection of vernal pools. Although there were requirements in place, including the

ESA, nothing was done. Why am I to believe the Plan outcomes will be any better. The Plan needs to set forth a hard number of acres of functioning vernal pools. The number cannot decline over the life of the Plan. If it does, no more permits. Period. That might assure compliance.

Section 7.3.2. 1:1 mitigation for vernal pool take is absurdly low. In the past, wetlands mitigation ratios have generally been 3:1 or more, have they not?

And I found no specific success criteria for vernal pool protection or restoration--including a realistic timeline for monitoring and management to assure success. Given the lengthy discussion under Unforeseen Circumstances on fire, drought and climate change, we can anticipate irregularity. Therefore, the traditional 1, 3 or 5 year success monitoring and management periods should be lengthened.

Low quality vernal pool exemptions are purely loopholes and not based on any scientific facts of which I am aware. I have helped document a number of highly successful vernal pool preserves in Northern California on lands that have been overrun by exotic invasives and grazed by cattle for centuries. In fact, grazing is a tool to remove invasives and enhance vernal pools!

Similarly, nearby water quality issues may or may not have much to do with vernal pool success.

In Downtown Ramona, I suggest the conservation bank be set up immediately, lands acquired (from the School District--if need be by eminent domain) and seeded by the County with adequate money for acquisition, restoration, monitoring, management and reporting.

Project applicants can thereafter reimburse the County as they pull permits. Otherwise, this plan will languish for need of initial, up front land and funding.

You will never be better off in this area than you are now without action.

9. Section 5.3 (and others) on Conservation Easements. The current County Conservation Easement applies generally to private lands, but not to public entities. And, the document is often no more than a temporary declaration of Open Space zoning, easily overturned by the Supervisors. CDFG, ACOE, USFWS and others have developed very good conservation easement forms in conjunction with large landowners and non profit stewards of conservation lands. I suggest talking with Sherry Teresa at the Center for Natural Lands Management (www.cnlm.org)

10. Conservation and Mitigation Banks (5.4.1). These only work if state and federal regulators broadly allow the use of credits to mitigate take. In the past, such authority has been unreasonably withheld. And, such banking only works when there is development within the area served by the bank! You need to assure cooperation among agencies to make this source of land and money work.

11. Management. Section 5 including 5.2.2 and 5.2.3

I do not understand why exotic and invasive species control is included in Adaptive Management and not in Stewardship?

Does the Plan state clearly that exotics and invasives will be removed prior to land or a conservation easement being accepted into the Preserve and related permits granted? Is this a hard-line requirement?

What about existing "conserved" lands within the Plan area that are infested?

According to CDFG protocols, as I understand them, control of invasives and exotics belongs in Stewardship.

Using per acre averages to estimate future stewardship and adaptive management costs is problematic. Are you familiar with the PAR process? Will it or something similar be used in each land or CE acquisition to raise specific funds needed for the future management of land and easements?

It appears to me that the $50/acre for Adaptive Management is very low.

Why?

It includes, in addition to such adaptive management techniques as are outlined, invasive control, biological survey, reporting, monitoring, contingency and administration.

Typically, Administration and contingency would be AT LEAST equal to 25% and probably closer to 30% of direct costs (stewardship plus invasive control plus survey, monitoring and reporting).

The number in the Plan is low. It mostly falls on the County to decide whether to make up the difference out of general funds, or to stop doing the work.

This goes to the very heart of the problem with the Plan. It is, essentially, a gift of permits to permit seekers, and a vague promise on the part of the County to create an adequately designed and funded conservation plan.

12. Enforcement is very vague. "Pursuant to County regulations".

What about pulling the NCCP permit altogether if conservation does not occur?

Peter H. St. Clair
2326 Whitman Street

San Diego CA 92103
619-260-1307 home phone

I noticed a mistake in my MSCP comments of March 13.

Item #7, I refer to Rancho Guajome.  I meant Rancho Guejito.

Peter H. St. Clair
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April 1, 2009

County of San Diego, Department of Planning and Land Use
MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123
Facsimile: (858) 694-3755

Via Certified Mail

Re: North County Multiple Species Conservation Program (MSCP) Draft Report

Dear Planners:

This firm represents the owners of several properties within the North County MSCP planning area, including but not limited to, the owners of County assessor parcel numbers 126-140-20, 126-170-27, 126-130-06, 126-170-04, 126-230-7, 126-230-30 and 126-230-31. The owners object to the North County MSCP for several reasons.

Although data was collected and modeling was used, it is the owners contention that the Pre-Approval Mitigation Area (PAMA) designated in the North County MSCP was arbitrarily and unreasonably selected. For example, a significant area around the San Luis Rey River Basin is designated as PAMA, and Caltrans is building a major freeway project (SR-76) that runs along the San Luis Rey River Basin. The whole alignment corridor for the freeway was calculated in the conservation analysis as zero percent conserved, so all species and habitats within this area were calculated as if they were taken.

The County of San Diego is working too closely with Caltrans to the detriment of the property owners along the San Luis Rey River Basin. It is clear that without the State Route 76 freeway, the PAMA would not extend so deeply into the properties along the San Luis Rey River Basin.

Changes to the Resource Protection Ordinance (RPO) and the Biological Mitigation Ordinance (BMO) are also suspect as being tailored to the freeway. According to the most recent amendment to the County's RPO, when areas identified as steep slopes are subject to development only minimal encroachment is allowed on the steep slopes and the remainder must be set aside in an open space easement. The freeway is causing a whole swath of new slopes to add to the already existing slopes within the freeway alignment thus increasing the number of open space easements burdening property owners.

The PAMA designation appears to be an overly onerous zoning ordinance based on general studies as opposed to individual property studies. It assumes that threatened species and/or vegetation exist on certain properties based on findings with respect to other properties nearby. It purports to be discretionary, however the mitigation ratios of between 1:1 and 2:1 say otherwise. Because of the severe negative impacts caused by the PAMA designation, just compensation under eminent domain law should be paid to property owners within the PAMA.

Thank you.

Sincerely,

Robert Stack

RAS/hk

cc: Greg Avedian
Victor Avedian
Monica Avedian
Avedian Family Trust
Bud Alles
The Trust of Harold F. Alles
The Trust of William C. Buster
William R. Buster
Mark W. Buster

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
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1451 Research Park Dr., Suite 100
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IN REPLY REFER TO:
Executive Direction

APR 16 2009

County of San Diego
Department of Planning and Land Use, MSCP Division
5201 Ruffin Rd., Suite B
San Diego, CA 92123

RE: Comments on San Diego County North County MSCP

This letter is submitted to oppose inclusion of all Tribal fee land adjacent to Indian Reservations as part of the North County MSCP or Pre-approved Mitigation Areas (PAMA). I am concerned that the County's designation of tribally owned lands and lands surrounding reservations as PAMA forecasts these areas as primarily used for open space preserves. In so doing, it appears the County is not working with tribes on a government to government basis as with other state and local governments. The MSPC will set up a "conflict in land use" as a basis to object to Tribes bringing land into trust and activities on reservations. This would ignore Tribes' sovereignty and governance.

The County's position is not constructive to its relations with local tribes nor is it likely to lead to the successful development of preserve areas on these lands. Joint planning and land use development often leads to cooperative actions. The placement of PAMA and preserves around all of the Reservations appears to be designed to set up a land use conflict when the tribal land is brought into trust. Please be advised that the BIA will appropriately evaluate comments from the County seeking to oppose fee to trust applications on these lands, specifically by invoking section 151.10(f) and claiming "a conflict in land use" as the basis of their objection. We believe that there is a more genuine method of depicting these lands which respects the Tribes; sovereign capabilities and supports the County's stated position that it has developed a plan that is viable without inclusion of tribal lands.

Lands owned by Tribes adjacent to their current reservations should not be included in the Pre-Approved Mitigation Area (PAMA) as it is reasonable and foreseeable to be brought into Trust and are not likely additions to the MSPC preserve. The overall process for MSCP development should be joint and interactively developed and agreed on a government to government basis. This is not a "Changed Circumstance" as indicated in the MSCP on page 122; I am requesting that said lands be removed from your plan, just as Reservations have.

Sincerely,

James J. Fletcher
Superintendent

cc: Robert H. Smith, Chairman, Pala Band of Mission Indians
Bo Mazzetti, Chairman, Rincon Nation of Luiseno Indians
Chris C. Devers, Sr., Chairman, Pauma Band of Mission Indians
Allen Lawson, Chairman, San Pasqual Band of Mission Indians